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ENVIRONMENTAL ASSESSMENT BOARD



ONTARIO HYDRO DEMAND/SUPPLY PLAN HEARINGS

VOLUME: 173

DATE: Wednesday, November 25, 1992

BEFORE:

HON. MR. JUSTICE E. SAUNDERS Chairman

DR. G. CONNELL Member

MS. G. PATTERSON Member

FARR
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REPORTING INC.

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2300 Yonge St., Suite 709, Toronto, Canada M4P 1E4

ENVIRONMENTAL ASSESSMENT BOARD
ONTARIO HYDRO DEMAND/SUPPLY PLAN HEARING

IN THE MATTER OF the Environmental Assessment Act,
R.S.O. 1980, c. 140, as amended, and Regulations
thereunder;

AND IN THE MATTER OF an undertaking by Ontario Hydro
consisting of a program in respect of activities
associated with meeting future electricity
requirements in Ontario.

Held on the 5th Floor, 2200
Yonge Street, Toronto, Ontario,
Wednesday, the 25th day of November,
1992, commencing at 10:00 a.m.

VOLUME 173

B E F O R E :

THE HON. MR. JUSTICE E. SAUNDERS	Chairman
DR. G. CONNELL	Member
MS. G. PATTERSON	Member

S T A F F :

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MS. C. MARTIN	Administrative Coordinator
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EXHIBIT NO. 650: The Cost of Nuclear Plant Capital Modifications: A Statistical Analysis, Revised September, 1992, by William B. Marcus.

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1 ---Upon commencing at 10:03 a.m.

2 THE CHAIRMAN: Please be seated.

3 I have a few small housekeeping matters
4 to attend to in relation to exhibits that have been
5 filed since we last met.

6 Exhibit No. 466A is a Revised Errata to
7 the Alternative Energy Review; Exhibit No. 793 is a
8 paper titled Marginal Cost Pricing: An Integral Part
9 of a Long-Term Demand/Supply Plan, Marvin Shaffer of
10 Marvin Shaffer and Associates Ltd., filed by Energy
11 Probe; Exhibit No. 794 is a paper titled Water Charges
12 to Hydroelectricity Producers: An International
13 Survey, Elizabeth Brubaker, the Borealis Energy
14 Research Association, also filed by Energy Probe;
15 Exhibit No. 795, Water Charges to Ontario Hydro
16 authored by Elizabeth Brubaker, Borealis Energy
17 Research Association, also filed by Energy Probe.

18 ---EXHIBIT NO. 466A: Revised Errata to the Alternative
19 Energy Review.

20 ---EXHIBIT NO. 793: Marvin Shaffer, Marvin Shaffer and
21 Associates Ltd., "Marginal Cost Pricing:
22 An Integral Part of a Long-Term
23 Demand/Supply Plan," filed by Energy
24 Probe.

25 ---EXHIBIT NO. 794: Elizabeth Brubaker, Borealis
26 Energy Research Association, "Water
27 Charges to Hydroelectricity Producers:
28 An International Survey," filed by Energy
29 Probe.

1 ---EXHIBIT NO. 795: Elizabeth Brubaker, Borealis
2 Energy Research Association, "Water
3 Charges to Ontario Hydro," filed by
 Energy Probe.

4 THE CHAIRMAN: We came here this morning
5 prepared to deal with the Northwatch motion and
6 approximately fifteen minutes ago I was handed a
7 Motion, an Outline of Submissions from the proponent,
8 which appears to be a motion to adjourn the Northwatch
9 motion, and in addition to adjourning the Northwatch
10 motion, to also adjourning the Ontario Hydro evidence
11 which was scheduled for next Monday morning, subject to
12 the determination of the Northwatch motion.

13 I don't know whether the others, many
14 others who came here today have got copies of this
15 unexpected request for an adjournment. Has it been
16 circulated?

17 MR. B. CAMPBELL: I have circulated
18 copies, Mr. Chairman.

19 THE CHAIRMAN: I guess I should ask, just
20 to get a feeling before I call Mr. Campbell, is there
21 anybody opposed to the motion? I just want to know if
22 you are opposed or not.

23 MR. GREENSPOON: I would like to speak
24 before you call Mr. Campbell.

25 THE CHAIRMAN: You would like to speak

1 before, all right.

2 MR. D. POCH: We are opposed to the
3 request for adjournment.

4 MR. ROSENBERG: We are opposed.

5 THE CHAIRMAN: There is opposition to
6 that.

7 I think perhaps Mr. Campbell is entitled,
8 it's his motion for an adjournment, he should be
9 entitled to do speak too it first, I would think.

10 MR. GREENSPOON: I just wish to be brief.

11 THE CHAIRMAN: That's not really the
12 point. I think that Mr. Campbell is entitled to make
13 his motion and then you can speak.

14 MR. GREENSPOON: My submission would be
15 that he's not entitled to argue the motion. I will
16 speak to that. That he's not entitled to argue this
17 motion. I will just speak to that issue.

18 THE CHAIRMAN: I think you can do that
19 after he has made his submission.

20 MR. GREENSPOON: I drove all the way from
21 Gore Bay to argue this motion. I got this 10 minutes
22 ago.

23 THE CHAIRMAN: All right, Mr. Greenspoon,
24 you can make your submission now, whatever you want to
25 say.

1 MR. GREENSPOON: That's all I need to
2 say. I got this 10 minutes ago, there is no notice,
3 there is no returnable date. He called me yesterday
4 and I was leaving the door to drive here, and he had
5 some problem with the Government of Manitoba. And now
6 10 minutes before -- I haven't even read this. I think
7 we need an hour to think about what we are going to do
8 on this motion. I haven't even had a chance to read
9 this, I just got it.

10 THE CHAIRMAN: That I am quite prepared
11 to do.

12 MR. GREENSPOON: Well then, I would ask
13 for an hour.

14 THE CHAIRMAN: That I am quite prepared
15 to do.

16 This is not unheard of where I come from.
17 [Laughter] I think that eight out of 10 matters that I
18 ever have scheduled, at some point somebody asks for an
19 adjournment. I will tell you that they don't get it
20 very often in those circumstances. But it's not an
21 unusual thing.

22 So I think we will adjourn. What do you
23 think, an hour, would that be sufficient?

24 MR. GREENSPOON: Yes, I would like an
25 hour.

1 THE CHAIRMAN: We will adjourn until
2 eleven o'clock this morning.

3 ---Recess at 10:09 a.m.

4 ---On resuming at 11:03 a.m.

5 THE CHAIRMAN: Please be seated.

6 Mr. Campbell.

7 MR. B. CAMPBELL: Thank you, Mr.
8 Chairman. Before commencing today I should advise the
9 Board that I have been asked by Ms. Martin --
10 ---Discussion off the record.

11 MR. B. CAMPBELL: Thank you, Mr.
12 Chairman.

13 Ms. Martin has asked that I advise the
14 parties who will follow me today that she has had this
15 microphone looked at and that one of the problems, she
16 has advised, is that when people come in and sort of
17 drop their book down it loosens the stand, and if we
18 would be careful not to unduly jar the lecturn here she
19 would appreciate it because it will save her having
20 repeated trips to repair the microphone.

21 And I have been appointed by Ms. Martin
22 to police this matter and I always do whatever Ms.
23 Martin tells me precisely and I intend to in this case
24 as well. So I give fair warning.

25 THE CHAIRMAN: We have learned over the

1 years that that is a good course of action.

2 [Laughter.]

3 MR. B. CAMPBELL: Mr. Chairman, Ontario
4 Hydro does not bring this matter before you lightly.
5 We are, however, in circumstances which, in my
6 submission, compel us to request of you some amendment
7 to the schedule and some directions with respect to the
8 appropriate order or the hearing of additional
9 evidence, argument of the Northwatch motion and related
10 matters.

11 Ontario Hydro recognizes that Northwatch
12 has a right to have its motion heard and we do regret
13 the necessity of seeking this adjournment, however,
14 there are times, in our submission, where legitimate
15 concerns arise which affect this scheduling, it is a
16 matter for the discretion of the hearing panel, and
17 Ontario Hydro submits that the clear public interest in
18 the current circumstances is in favour of a further
19 adjournment both of the motion and of the hearing of
20 Ontario Hydro's additional evidence.

21 I want to start by speaking to matters
22 that are particular to the concern in relation to the
23 calling of evidence. I think these also relate to the
24 timing of the motion, but I want to deal with them
25 specifically, first, in the context of calling of

1 evidence.

2 At the beginning of last week I indicated
3 that there were a nest of issues that were tightly
4 interrelated that we asked for the opportunity to
5 discuss during the week. We did so, and those
6 discussions were dealt with by the Board last Thursday.

7 Since the conclusion of the proceeding
8 last Thursday, Ontario Hydro received Manitoba Hydro's
9 response to Ontario Hydro's request for a five-year
10 deferral of the 1,000 megawatt purchase.

11 I have provided you in the material
12 attached to my outline of submissions a copy of the
13 press release issued by Manitoba Hydro in respect of
14 that information, and I would particularly like to draw
15 the Board's attention to four matters that are raised
16 in the Manitoba Hydro position. They are set out in
17 the third paragraph of the Manitoba Hydro news release.

18 What is outlined here is that Manitoba
19 Hydro is requesting that if Ontario Hydro wishes to
20 pursue the deferral it would expect to do so on the
21 basis of compensation in three areas and certain
22 adjustments to the contract language.

23 I will simply note that they are set out
24 in the third paragraph as first, compensation for the
25 reduction in the net present value benefits of the

1 deferral; second, interest on Manitoba Hydro's
2 investment in the project to date; third, payment for
3 providing Ontario Hydro with an exclusive claim on
4 Manitoba power. Those three of course are the monetary
5 items. And fourth, adjustments to the contract which
6 will eliminate risk to Manitoba Hydro of Ontario Hydro
7 deferring again.

8 Now, the implications of that response
9 are currently being evaluated. That process has
10 commenced this week, obviously it is far from complete.
11 [11:15 a.m.]

12 And Ontario Hydro submits that it should
13 not be required to call evidence relevant to or dealing
14 with the Manitoba contract, or I should add, issues
15 which may affect the evaluation of the response from
16 Manitoba at a time when it is in the very midst of
17 evaluating Manitoba's response, determining its
18 relative merits in relation to the situation under the
19 existing contract provisions, dealing with Manitoba on
20 these and related questions, and developing
21 recommendations for consideration of Hydro's senior
22 management and board of directors.

23 What is clear on the evidence before the
24 Board is that these decisions involve hundreds of
25 millions of dollars. This is not a minor matter. They

1 are hundreds of millions of dollars of what in the end
2 are public monies.

3 In Ontario Hydro's submission, its
4 ability to fairly consider and arrive at an appropriate
5 conclusion on the best course of action to follow in
6 light of Manitoba Hydro's response would be severely
7 jeopardized if Hydro is required to bring witnesses
8 before the Board at this time. That is prior to
9 Ontario Hydro having arrived at a considered view on
10 the matter.

11 There can be no question that witnesses
12 appearing before you now from Hydro on the planning
13 side, which is what is contemplated, would be asked
14 about matters that are relevant to the evaluation of
15 the Manitoba situation, and I am advised would be asked
16 directly to explain what is being considered. We would
17 of course object to those questions. But there is no
18 question that any proceeding undertaken now is going to
19 be staccato at best.

20 THE CHAIRMAN: I'm sorry. Staccato at
21 best, is that what you said?

22 MR. B. CAMPBELL: Chopped into little
23 pieces by objections that I will inevitably have to
24 bring to protect Ontario Hydro's interest in
25 maintaining the ability to fairly consider the

1 situation with Manitoba.

2 Lest you have any doubt that this is a
3 matter of considerable concern to Manitoba, I
4 understand that at the back of this room both last week
5 and today is counsel for Manitoba Hydro. This is a
6 matter of immediate and significant discussion between
7 the two organizations.

8 There is no question, as I understand it,
9 that Manitoba Hydro is consulting counsel on the
10 matter. And I submit that just on that basis alone it
11 is inappropriate to require Hydro to bring forward
12 evidence on matters so directly relevant to the
13 Manitoba evaluation at this time.

14 Now, what I say to you is that that
15 represents a public interest that is directly relevant
16 to everyone in this province that arises at a time in
17 Hydro's history, as the board memorandum of September
18 and October that have been filed with you indicate,
19 Ontario Hydro is facing significant financial pressure.
20 There are just a set of circumstances here that cry out
21 of public interest.

22 In my submission, while I do not discount
23 in any way Northwatch's interest in having its motion
24 dealt with expeditiously, I don't argue with that, what
25 I do say is that you have two interests to balance and

1 that on balance the public interest is not jeopardizing
2 a significant consideration relating to such
3 fundamental issues and planning concerns, and in simple
4 terms such large dollars outweighs Northwatch's
5 interest in having the matter pursued now. And it
6 outweighs, in my submission, any necessity which I say
7 can be suspended for a short period for hearing from
8 Ontario Hydro, as to whether any of the matters of
9 which the Board has been made aware over the fall
10 affect Ontario Hydro's Panel 10 evidence.

11 Now, the difficulty of Hydro proceeding
12 to call evidence on the current schedule is exacerbated
13 by the fact that there is a regular, as the Board is
14 aware as heard in testimony, there is a regular
15 forecasting cycle, we are right in the middle of those
16 forecasts going through their senior management review
17 and going to the board of directors in December. I
18 have already received requests for some of that
19 material. Those requests must await the approved
20 information.

21 THE CHAIRMAN: I'm sorry, I don't follow
22 what you are talking about. Are you talking about the
23 request for information made by the Municipal
24 Electrical Association?

25 MR. B. CAMPBELL: They are not alone.

1 What I say, just generally, is that one
2 of the matters, for instance, raised in the October
3 Board memorandum is the load forecast, standard load
4 forecast cycle, that is now going through the senior
5 management approval process on its way to the board of
6 directors in December.

7 THE CHAIRMAN: Just so we can be more
8 specific, what is the date of that board of directors'
9 meeting?

10 MR. B. CAMPBELL: My understanding is
11 that it is December 14th.

12 THE CHAIRMAN: December 14th. And is my
13 understanding correct, it is the 1993, I keep writing
14 the date, is it the 1993 load forecast we are talking
15 about?

16 MR. B. CAMPBELL: It would be the 1992
17 load forecast, as of the date of approval.

18 THE CHAIRMAN: That is going to be
19 considered on the 14th of December; is that right?

20 MR. B. CAMPBELL: Yes, that is correct,
21 Mr. Chairman.

22 THE CHAIRMAN: I'm sorry to interrupt
23 you, I want to get this. I take it that if such
24 approval is given, then that document, whatever it is,
25 will be available at that time?

1 MR. B. CAMPBELL: Absolutely, Mr.
2 Chairman. That has been our practice, as you are
3 aware, that when these documents come out of the normal
4 planning cycle, they are made available. We have been
5 careful to ensure that that happens.

6 THE CHAIRMAN: I suppose it is possible
7 that the board could either amend or reject it. Would
8 that be possible?

9 MR. B. CAMPBELL: That is quite possible.
10 It's entirely within their prerogative. Obviously the
11 management of Hydro is taking it to them with the
12 recommendation and hopes that that will be the result.

13 THE CHAIRMAN: Okay.

14 MR. B. CAMPBELL: But it is clear that in
15 terms of Hydro releasing an official forecast, if the
16 evidence went ahead on the schedule we are talking
17 about, again we are into a problem where once the
18 document is approved and issued, in my submission, you
19 might well face the situation that having had people up
20 and talked about it in the way that the October Board
21 memo talks about it, which is generally what the
22 expectation is, when the actual document comes out,
23 life in this hearing being what it is, you can expect
24 that people will raise matters directly from that
25 documentation and you may be right in a back in the

1 same position that we are now with the request for
2 additional evidence.

3 We also have the problem that many of
4 these items are integrally related with the evaluation
5 that's being carried out on Manitoba, and Ontario Hydro
6 needs to bring these together and of course is aiming
7 at the December board meeting for that purpose.

8 In any event, what we say is that when
9 while changes in data and forecasts are recognized as a
10 normal process, the particular timing of these matters,
11 the close relationship to the request to have Ontario
12 Hydro call additional evidence to the Manitoba
13 evaluation and to the matters which need to be
14 considered on the Northwatch motion, support a short
15 pause to permit issues to be dealt with on a more
16 appropriate timetable without interruption or
17 repetition.

18 I would remind the Board that we didn't
19 end up with the request for additional evidence or the
20 Northwatch motion for that matter by accident. It
21 arose out of the fact that in an effort to keep people
22 up to date, including this panel, we provided the
23 September board memo, that the October board memo has
24 been provided dealing with capital review and to some
25 extent as well of course forecast issues, and that

1 those forecasts and other issues gave rise in a very
2 real way to the Northwatch motion and to the request
3 for additional evidence. They are not separate things;
4 they are the same thing and many of the matters,
5 particularly in the forecasting area that are laid out
6 in a preliminary way in those memos are to be dealt
7 with in the forecasts going to the Board in December.

8 As we say, we submit that these timing
9 considerations affect both the scheduling of the
10 upcoming Hydro witnesses and the scheduling of the
11 argument of the Northwatch motion, and I would like to
12 really turn to that side of it now.

13 The Northwatch motion, as I have pointed
14 out at paragraph 6 of my outline of submissions, is
15 based on broad considerations which Northwatch alleges
16 should lead to early dismissal. But I point out to you
17 that the motion on its face does not provide any
18 specific focus on the matter of the approval requested
19 for the Manitoba transmission.

20 Clearly, if the motion is successful,
21 approvals are denied. But what I say is that it's
22 couched in a broad way without a particular focus on
23 Manitoba transmission.

24 Now, Ontario Hydro continues, as it's
25 required to do, to make best efforts to obtain such an

1 approval from this hearing panel.

2 Ontario Hydro points out that the
3 Northwatch motion, if successful, would effectively
4 determine the specific issue of the approval requested
5 for the Manitoba transmission, and we submit that in
6 dealing with the motion, a distinct finding is required
7 in relation to the Manitoba transmission approval
8 request.

9 We say it's not good enough to simply
10 deal with broad generalities here.

11 [11:30 a.m.]

12 If you are going to grant the relief
13 requested or even consider the relief requested to
14 dismiss this application, you have to deal with the
15 specific approval request before you, and the one we
16 are focusing on that is of particular interest right at
17 the moment, for obvious reasons, is the Manitoba
18 transmission.

19 We say it's possible for you to do that,
20 we say it's possible for you to do that but, for all of
21 the reasons I have outlined, it is important that
22 Ontario Hydro be permitted to come to a conclusion on
23 the Manitoba discussions before adopting the process
24 that we have suggested for how you can do that.

25 Again, we are not trying to suggest that

1 you can never get to the Northwatch motion, that is not
2 our purpose here. But we do think there is a right way
3 and a wrong way to do it, given that you have got to
4 deal with the specific approvals.

5 THE CHAIRMAN: I am having a little
6 trouble following this and perhaps I am not...

7 The Northwatch motion is ready to go. I
8 take your point that it doesn't specifically provide
9 for anything to do with the Manitoba transmission, in
10 fact it has been said many times that the Manitoba
11 contract itself is not a subject of approval by the
12 Board.

13 But Hydro has not sought to bring in any
14 additional evidence in support of its position on the
15 motion, and the evidence that is already there is there
16 and in the public record and will form the basis for
17 the decision on the motion.

18 So I don't quite understand why the
19 Northwatch motion should not proceed, even if there are
20 these ongoing discussions of extreme importance with
21 Manitoba Hydro. That is what I don't quite follow.

22 MR. B. CAMPBELL: What we say is in
23 dealing with the Northwatch motion you must of
24 necessity, because of the relief requested, deal with
25 and provide some focus on the particular approval

1 request before you. They are asking that they be
2 dismissed.

3 THE CHAIRMAN: Well, that's the point I
4 just don't follow, because surely it's how the
5 Northwatch motion is couched and presented that will
6 determine how it's disposed of and nothing that will be
7 available for consideration of that will be anything
8 that everybody doesn't already know about, including
9 Manitoba Hydro and its advisors.

10 MR. B. CAMPBELL: Let me carry you
11 through the logic that we face because we face a
12 particular problem on this.

13 Our problem is the Northwatch motion
14 asked for the application to be dismissed. That
15 necessarily means that the application for approval of
16 the Manitoba transmission, which is part of that, will
17 be dismissed.

18 We do not now know, because we are in the
19 very midst of these discussions, as to the precise
20 basis on which the Manitoba transmission rationale
21 should be argued in front of you. We have made a
22 proposal to Manitoba Hydro, Manitoba Hydro has given us
23 a response which we are in the process of evaluating.
24 My client must complete that evaluation before it can
25 sensibly be asked, in my submission, to take a position

1 and support that position with a rationale on the
2 matter of the Manitoba approval.

3 There is no question that Hydro was
4 seeking that approval, but it seems to me quite unfair
5 to ask Hydro to come before this Board and argue that
6 the Northwatch motion should be denied on that and
7 other grounds, but I'm not quite sure I can describe to
8 you crisply exactly the rationale that Hydro has for
9 the position it is taking for approval of the Manitoba
10 transmission.

11 That rationale, at the moment, at this
12 exquisitely difficult point in time, is not settled.
13 If we argued it exactly on the existing terms of the
14 contract, fine; we argued it exactly on the terms that
15 we proposed to Manitoba, fine; we argued it exactly on
16 the proposal that Manitoba Hydro gave to us, fine; but
17 I don't know which of those or which inbetween
18 constitute the proper basis on which to argue this
19 matter before you.

20 And, you know, we haven't pretended in
21 front of you that we should take this when we don't
22 know. We have been honest with you and said we cannot
23 deal with this aspect of the matter until we have a
24 firm basis to provide you with a rationale for the
25 position we are taking.

1 And, in my submission, right at this
2 little window of time I cannot know, nor can the
3 corporation be fairly expected to instruct me, on
4 exactly the rationale. We know that question will be
5 resolved very quickly, but in any circumstance where
6 information changes there is a brief moment when the
7 implications need to be considered in order to develop
8 the position. That's gone on throughout this and every
9 other hearing, and we are right now in that brief
10 moment.

11 THE CHAIRMAN: Well, I think it's
12 dangerous to argue or try to argue the Northwatch
13 motion in the context of an adjournment request.

14 I still find the whole situation a little
15 puzzling as to why the Northwatch motion itself could
16 not continue without any prejudice to the Manitoba
17 situation, but perhaps I'm missing something that I
18 don't understand.

19 So I think we will just have to leave it
20 at that for the moment.

21 MR. B. CAMPBELL: Ooh.

22 THE CHAIRMAN: Maybe my two colleagues
23 understand it and they can instruct me on it.

24 MR. B. CAMPBELL: Mr. Chairman, I mean, I
25 can't leave it like that. I have to --

1 THE CHAIRMAN: Well, I would have thought
2 that the Northwatch motion, as I understand it, does
3 not require this Board to consider whether or not the
4 Manitoba contract should or should not go forward.

5 That is not what the motion is about; the
6 motion is that what is before us is inadequate and,
7 therefore, the hearing ought to be dismissed then the
8 consequences from that follow.

9 But I don't want to say any more about it
10 than that. Perhaps you and I are both in the same
11 position.

12 MR. B. CAMPBELL: But, Mr. Chairman, from
13 my client's position if this Board makes a finding of
14 inadequacy, the practical effect, the result of that is
15 that we are denied approval. That's the bottom line.

16 THE CHAIRMAN: Yes, but that does not
17 necessarily mean that you couldn't put a fresh
18 application in the next day limited to getting what you
19 need to implement the Manitoba contract.

20 MR. B. CAMPBELL: I can always do that.
21 I mean, fresh applications, you fill out the paper and
22 you send it in. It's not quite that simple but, sure,
23 in a process sense I can always file a fresh
24 application. I want to win this application.

25 THE CHAIRMAN: I understand that.

1 MR. B. CAMPBELL: And I want to make the
2 best arguments that I can to you as to why you should
3 not deny this approval to us.

4 I cannot do that right now. A couple of
5 weeks from now I can; a little while ago I could have,
6 but right at this little window in time I think it is
7 unfair to expect Hydro to deal with such a momentous
8 issue on the basis of: Well, it could be this or it
9 could be that.

10 THE CHAIRMAN: Well, I was going to ask
11 you this later but now that you have raised it I'll ask
12 it to you now.

13 Why won't we be hearing the same thing on
14 January the 5th that you are still in negotiations with
15 Manitoba and if you put this out it is going to be
16 terribly prejudicial and you cannot possibly disclose
17 all this information and so on, so you will be asking
18 for another adjournment on January 5th, and so on and
19 so on and then, heaven forbid, there is litigation and
20 all this information will be prejudicial to the
21 litigation.

22 I mean, there is no end to this kind of
23 problem. I recognize that there is a problem with
24 magnitude because it is a big issue, but surely this is
25 what goes on all the time.

1 MR. B. CAMPBELL: Well, Mr. Chairman,
2 with respect --

3 THE CHAIRMAN: I mean, you are a public
4 corporation and you have to do your business publicly.

5 MR. B. CAMPBELL: Exactly, and there is a
6 huge public interest associated with this issue, and
7 what I say to you is that I, or anyone else in this
8 room, can construct a scenario of the type you describe
9 that has this going on forever. I can construct that
10 hypothetically.

11 What I have said to you, and what I have
12 said in the material, is that we don't expect that to
13 be the case. There is no benefit to Hydro in a lengthy
14 delay on this matter. It wants and needs a resolution
15 to this matter.

16 There are important issues afoot at the
17 corporation, this is one of them; they need attention,
18 they are receiving attention, and they are going to be
19 determined. There is no interest in Hydro in waiting
20 the determination of those issues one day longer than
21 necessary. There is every interest in Hydro in
22 determining the matter and coming to a decision at the
23 earliest possible date. The corporation needs that for
24 its own purposes in governing its own affairs.

25 I have indicated to you that the full

1 expectation is that this matter can be resolved by
2 mid-December. Can I stand here and give you an iron
3 clad guarantee, no, but I don't say it lightly, I
4 haven't suggested that lightly. I am aware of the
5 Board's desire to keep this proceeding moving in a
6 timely way and I endorse that.

7 That is entirely consistent with Ontario
8 Hydro's interest throughout this matter and, in my
9 submission, Hydro has demonstrated time and time again
10 to this hearing panel that it acts consistent with that
11 objective. The corporation has put an enormous effort
12 into keeping this matter moving in a timely manner.
13 There can be, in my submission, no question about that.

14 So we come before you relying on that,
15 asking you to recognize that this is in our interest to
16 resolve early and perfectly independently of the
17 hearing panel to recognize that we did not bring this
18 before you lightly today. We were aware of the Board's
19 concern with schedule, we know it is serious, and we
20 will take every reasonable step we can to contribute to
21 achieving the Panel's objectives in that regard.

22 What we are saying to you is in this
23 exquisitely difficult moment in time there is a broader
24 public interest. There are enormous sums involved and
25 there are --

1 THE CHAIRMAN: I think I understand. You
2 have made that point.

3 I think you should go on to your next
4 point.

5 [11:45 a.m.]

6 MR. B. CAMPBELL: Mr. Chairman, the way
7 we have suggested that this matter be dealt with is set
8 out in paragraph 8 of our submissions, our outline of
9 submissions, and we have suggested this simply as one
10 mechanism for providing the focus which we say is
11 required in dealing with the Northwatch motion. We
12 suggest that this can be dealt with either prior to or
13 concurrently with the hearing of the Northwatch motion,
14 following Ontario Hydro's evidence.

15 Now, we start by saying you should hear
16 the evidence because in that way we can tell you in a
17 proper way about what the resolution of the Manitoba
18 transmission matter is and update the information base,
19 which is, all of those questions being so intricately
20 tied up with the rationale for the Northwatch motion,
21 you should get that information properly before you.

22 We then say that based on our
23 observations in the hearing, although no one has been
24 required to file any particular position on the
25 approvals, our observation is that we are unable to

1 identify any party which supports an approval for the
2 Manitoba transmission other than Ontario Hydro.

3 We are not aware of any party that is
4 suggesting that either it's recommended, Hydro's
5 proposed or any alternative plan include Manitoba
6 transmission. We want it to be integrated into our
7 plan, apparently no one else wants it to be integrated
8 into their plan.

9 THE CHAIRMAN: Can I ask the body if
10 that's the case or should I take that as given?

11 MR. B. CAMPBELL: All you can take as
12 given, Mr. Chairman, is that that is my perception,
13 Ontario Hydro's perception. We have not undertaken any
14 formal survey of this amongst the parties and other
15 parties may wish to speak to it. I have specifically
16 put it that way because it is our perception.

17 THE CHAIRMAN: Fine.

18 MR. B. CAMPBELL: I don't want to the
19 mislead anybody on that. That is our understanding of
20 where it sits. We could be wrong. That hasn't been
21 our observation.

22 But if we are right, then what you have
23 in front of you is all of the evidence that could be
24 called in support on an integrated or other basis. No
25 one is going to integrate it. The question of looking

1 at matters in an integrated way is all ex-Manitoba. We
2 are the only one that are looking at things in an
3 integrated way with Manitoba. Anybody who includes it
4 in their planning must, of necessity, be asking for a
5 approval of it or supporting approval of it, and we are
6 not aware of anyone supporting that approval. That's
7 our logic on the matter as we gaze out over the
8 different parties at the moment, where we think it
9 sits.

10 If that is right, then you have in front
11 of you all of the evidence that supports the
12 integration of Manitoba into the plan, and we say that
13 under those circumstances it is in both Manitoba
14 Hydro's and our own interest, I can only speak to
15 Ontario Hydro's interest, but I suggest it's in
16 Manitoba Hydro's interests as well, to have the board
17 say, to put it in the vernacular, if this is as good as
18 it gets, it ain't good enough, if that's your
19 considered opinion after hearing argument. That will
20 not be our position. It may be those of others.

21 THE CHAIRMAN: Excuse me. How is what
22 you are saying different from the motion that Mr.
23 Shepherd made, which we decided last July, other than
24 the assumption that there is no further evidence out
25 there that would either add to or detract from the

1 evidence that's already there with respect to the
2 feasibility of the Manitoba Purchase?

3 MR. B. CAMPBELL: The principal initial
4 difference is that the IPPSO motion was aimed at a
5 process of having the Board make a determination on the
6 Manitoba transmission approval for or against.

7 With so much parties lined up in
8 opposition as we see it, we recognize that the Board,
9 under its reasoning on the decision on the IPPSO
10 motion, would not deal with the question of approval at
11 this time. IPPSO wanted you to do that. You said, no,
12 we are at the situation where if we are asking for a
13 approval, we are in support and others are against, we
14 recognize that you can't make a determination to
15 approve without hearing from those parties.

16 But what we do say is if our assumption
17 is correct, nobody else wants to integrate it into
18 their proposals, then you have got on a fully
19 integrated basis all of the evidence you are going to
20 get on this matter. So it meets all of the concerns
21 that you raised in your decision on the IPPSO motion,
22 that you did need to consider matters on an integrated
23 basis. We say you can do that now, you have got all
24 the evidence on that, because no one else is suggesting
25 that it be integrated, because to do so would mean they

1 would support approval, and that logically follows, and
2 we are not aware of anyone supporting approval.

3 THE CHAIRMAN: But the reasoning that we
4 adopted in that decision, as I recall it, was that we
5 didn't think we could do that because there were so
6 many other factors involved and that we wanted to be
7 free to either include or exclude the Manitoba
8 transmission, depending on what seemed appropriate.

9 MR. B. CAMPBELL: And that's really the
10 point I addressed --

11 THE CHAIRMAN: This premature decision
12 would, in a sense, limit that flexibility.

13 MR. B. CAMPBELL: Well, I guess what I
14 say is two things, Mr. Chairman. First, we recognize
15 that you will not be prepared to consider actual
16 approval at this time. That's my first point.

17 My second point is, in all of the other
18 factors taken together affecting this is what I have in
19 short form terms referred to as the integration matter.

20 What I say to you is, if everyone else is
21 saying to you, we do not support approval of Manitoba,
22 they cannot both say that and say, but we want it
23 integrated into the plans and our evidence is going to
24 support that on a combination of all of those other
25 factors. That is simply a complete logical

1 inconsistency. Those two propositions cannot stand
2 together.

3 What I say to you is, if our assumption
4 is correct, then in terms of providing evidence on an
5 appropriate balance of integration that includes
6 Manitoba, we seem to be the only ones who have called
7 evidence to that view. We hold it strongly. We seem
8 to be the ones who hold that view, and you have got all
9 the evidence therefore that you are ever going to get
10 that supports a conclusion that Manitoba should be
11 integrated.

12 MS. PATTERSON: But surely if the hearing
13 went on and some parties, say all the other parties
14 didn't want the Manitoba transmission line, but if it
15 was a choice between something else which we might
16 approve and the Manitoba transmission line, they might
17 be happier with that in the end than having that ruled
18 out at this point.

19 MR. B. CAMPBELL: Well, what I say to
20 that is simply this: That if the parties cannot say
21 that to you now, having prepared all of their evidence,
22 they can't have prepared their evidence without
23 developing some position on these matters.

24 MS. PATTERSON: But nobody expects to get
25 everything they want.

1 MR. B. CAMPBELL: My concern is simply in
2 the end what is the position, and that can be dealt
3 with right now. They must know what their position is.
4 I don't know what their position is. But I say they
5 have prepared their evidence, ready to call their
6 cases, they have got to know what their position is.
7 All you need to do is ask them. And if you find out
8 that there is a material question in that regard, then
9 maybe it affects me. But I would like the opportunity
10 to argue that, is really all I am saying today. I
11 can't provide an answer to that because I don't know
12 what is out there at that level of detail.

13 What I am saying to you is, I think it at
14 least makes sense before the Northwatch motion or at
15 the same time as the Northwatch motion is heard,
16 because of the focus that we require on Manitoba, it at
17 least makes sense to consider that and hear submissions
18 on that. Again, I don't know what is out there so I
19 can't make submissions on it, it's impossible. That
20 may be a difficulty in what I have proposed, but I
21 would like the opportunity to argue it in light of
22 actual knowledge and not guess it.

23 DR. CONNELL: Mr. Campbell, no doubt we
24 will hear evidence on a multitude of subjects, demand
25 forecasts, NUGs, demand management, various forms of

1 supply. It seems to me rather likely that some of that
2 body of evidence will influence our judgment about the
3 Manitoba approval one way or the other. If, for
4 example, evidence of the merit of various approaches to
5 demand management, NUGs and other forms of supply is
6 not persuasive or appealing to the Panel, surely that
7 would substantially enhance the merit of the Manitoba
8 Purchase and the ultimate judgment of the Panel, and
9 vice-versa.

10 This is essentially repeating what we
11 said in our decision, but why should we not hear that
12 whole body of evidence before entertaining such a
13 proposition?

14 MR. B. CAMPBELL: Well, I think my answer
15 to that, Dr. Connell, is that in considering matters of
16 the type that are associated with my question B, what
17 you have to satisfy yourself on is that even bearing
18 that in mind you can say in clear conscience that your
19 view is that there is nothing that will persuade you.

20 That's the kind of test. I haven't
21 paraphrased it well. But it's the kind of test that
22 the Board has consistently applied in that
23 circumstance. And it is only if that test is met, that
24 you would make a determination that that part of the
25 application cannot possibly succeed.

1 I don't think you will come to that
2 conclusion, quite frankly. I think our evidence is
3 good. But that is the kind of test, and it really
4 deals with quite that problem. If you can't in clear
5 conscience say that, then this question disappears and
6 the hearing continues fully on the Manitoba matter.

7 MS. PATTERSON: The other part of the
8 motion is to dismiss everything. So how does your
9 dealing with the Manitoba transmission first affect the
10 rest of the motion?

11 MR. B. CAMPBELL: I think this affects it
12 very directly in that Ontario Hydro's -- how does it
13 affect the rest of the motion?

14 I guess I am less concerned -- I see the
15 two things as so in inextricably linked that --

16 MS. PATTERSON: Then why separate them
17 during the motion?

18 MR. B. CAMPBELL: Well, I am quite
19 content to have these questions argued concurrently,
20 that is fine. I just need a reasonable basis on which
21 to argue them and my whole submission is that at this
22 difficult moment in time I don't have that.

23 The kind of thing I have laid out here is
24 just the kind of thing that could be argued.

25 I mean, I would say, and I will say if

1 this is the way it goes, I will say to you, you need to
2 deal with this in order to deal with the Northwatch
3 motion. I have just laid it out specifically because
4 that's the element that I submit to you needs to be
5 addressed and I have tried to lay it out sort of quite
6 explicitly. But I say, and it is consistent with my
7 entire submissions on this matter, that for Ontario
8 Hydro to be able to deal with the Northwatch motion,
9 it's got to deal with this kind of question, and we
10 can't do it just right now. We are working hard to get
11 ourselves to the position where we can, but we just
12 can't right now.

13 ---Off the record.

14 MR. B. CAMPBELL: Mr. Chairman, I think
15 that that really brings me then to the schedule which
16 we have attached, it's very brief. Perhaps calling it
17 a schedule is a bit over-blown. But what we do say and
18 what our firm expectation is -- let me backup slightly.

19 It is apparent that the cusp for us is
20 about mid-December. We have expressed to you an
21 expectation that by somewhere in that time we will be
22 out of or will get ourselves out of this rather
23 exquisite difficulty we find ourselves in. I shouldn't
24 say little.

25 THE CHAIRMAN: But you did.

1 MR. B. CAMPBELL: I retract it.

2 [Laughter.]

3 By that time we expect to be out of this
4 difficulty that we are in.

5 Given the exigencies of the holiday
6 season, we suggest then that Hydro's panel, which will
7 inform you of the resolution of all of these matters
8 and deal with the concerns you have raised with respect
9 to does this change any of the Panel 10 conclusions,
10 could therefore be heard commencing January 5th.

11 I emphasize that we have put this way, or
12 such earlier date as may be feasible upon seven days'
13 notice to all parties, because if we can do it sooner,
14 if we can beat the mid-December date and do it sooner,
15 we want to have the opportunity to do that. That's why
16 we have put it the way we have put it.

17 I don't want to promise it to you
18 earlier, but the thought here is we will do it earlier
19 if we can.

20 THE CHAIRMAN: I am more concerned about
21 it being later than earlier. I want to be sure that
22 you are telling me, if you are, that January 5th is
23 what we call a pre-emptory date, that if this
24 adjournment is granted it will be on your undertaking
25 that you will not be asking for another adjournment on

1 January 5th no matter what the state of the
2 negotiations or situation with Manitoba is. Now you
3 may want some time to consider that, what your position
4 would be on that, but I would like to know what your
5 position is on that.

6 MR. B. CAMPBELL: Could I have a moment?

7 THE CHAIRMAN: Yes.

8 ---Off the record.

9 [12:04 p.m.]

10 MR. B. CAMPBELL: We are content to have
11 the matter made pre-emptory.

12 THE CHAIRMAN: All right, thank you.

13 MR. B. CAMPBELL: We then have a vast
14 amount of uncertainty as to how long cross-examination
15 will take.

16 The Board allowed in its correspondence
17 on this matter, I believe Ms. Morrison advised the
18 parties that you had allowed Monday and Tuesday I guess
19 next week, two days, was your planning estimate. I am
20 not going to make any comment on whether I think that
21 is reasonable or not, period.

22 What we do say is that at the conclusion
23 of that evidence we would certainly agree that it is
24 then that all of our difficulties, all of the parties'
25 difficulties in knowing what the state of play is, the

1 Board's difficulties in knowing what the state of Panel
2 10 evidence is are concluded and it is appropriate to
3 go on and deal with the issues that we say are entwined
4 in the Northwatch motion, and we suggest that that
5 follow two days after the conclusion of the evidence
6 just because it's not a bad idea sometimes to let
7 matters digest for just a minute.

8 There's no magic in the two days, it just
9 seems, history again providing me some guide here, that
10 that would be some very useful time to have.

11 And subject to any additional questions
12 that the Board may have of me, those are my
13 submissions.

14 THE CHAIRMAN: I just have a couple of
15 things I would like to raise with you.

16 It seems to me that if the 1992 forecast
17 will be issued in December, unless something happens at
18 the board level, I think the evidence of Ontario Hydro,
19 if it is called, should also include somebody who can
20 speak to that document, someone like Mr. Burke, so that
21 they would be available to answer questions about the
22 1992 forecast.

23 So that that may lengthen the time that
24 is needed to deal with it, but I think it would be
25 helpful to the parties to be able to address those

1 kinds of issues.

2 The second thing is, I would like to know
3 what your position is with respect to the request by
4 MEA which I have written request copies and others
5 about the backup documents on the material that is now
6 here or the raison d'etre for the some of the
7 conclusions that are contained in that memoranda.

8 I think Mr. Watson's letter sets those
9 out in detail. What is your position on that?

10 MR. B. CAMPBELL: I have advised Mr.
11 Watson that, at least when the plan was to proceed on
12 Monday, that it was virtually impossible for us to deal
13 with that in the time frame allowed.

14 I have also advised MEA that -- I guess I
15 didn't advise them about the date in particular. What
16 I'm prepared to say to everybody is that given the
17 longer time, we will have to look at that and see what
18 can be done.

19 We have not had the opportunity to review
20 that in any detail. I am quite prepared to undertake
21 to do so and deal with the parties on it starting right
22 away.

23 THE CHAIRMAN: But you would appreciate
24 that if that sort of material could be available around
25 the time of the load forecast so that that would enable

1 the parties to have a look at it, and that would
2 probably make the cross-examination a little more
3 meaningful and reduce the number of undertakings that
4 would have to be obtained if this material wasn't
5 available.

6 MR. B. CAMPBELL: I guess, Mr. Chairman,
7 I'm just not sufficiently up to speed. I know enough
8 about how these kinds of analysis get produced in
9 different parts of the organization to know that it is
10 not as simple a question as people sometimes think it
11 is. I think we have a record of trying to respond to
12 these requests reasonably and we will try to do so in
13 this case as well.

14 THE CHAIRMAN: Well, I'm just trying to
15 find Mr. Watson's letter, which I can't at the moment,
16 but there's certain statements in there which he takes
17 from the memoranda and says: What's the backup for
18 that. I think those are the kinds of things that the
19 parties are entitled to in order to...

20 I just take one at random, paragraph 4 on
21 page 2:

22 Paragraph 4(g) of the executive
23 summary indicates that 850 megawatts
24 energy management programs are economic
25 to defer and resulting in the capital

1 reduction of up to 1 billion and the
2 reduction in electricity prices of up to
3 3.5 per cent in the year 2002.

4 Now, I think that bald statement is
5 pretty dramatic and I think that parties would like to
6 know what's the basis for that, you know. So I think
7 that...

8 MR. B. CAMPBELL: I understand that and
9 we have tried to be reasonable in dealing with
10 information of these requests, both by way of
11 interrogatories and other ways, all the way through. I
12 can assure you that we will be in this case, and I can
13 assure that we will bear in mind the Board's concern
14 that it be done in sufficiently timely way that it in
15 fact means that the witnesses only need to be on for a
16 day or so. That would be fine.

17 DR. CONNELL: Mr. Campbell, I would just
18 like to probe the Manitoba question a little further
19 and I know I can count on you to tell me when to stop.

20 MR. B. CAMPBELL: You can.

21 DR. CONNELL: I am assuming that among
22 the possibilities that might emerge from this further
23 period of negotiation and consideration would be simply
24 continuing with the contract in its original form.

25 Another alternative would be a five-year

1 deferral, and I think we must assume that that
2 five-year deferral would be on terms that Hydro
3 believes to be preferable to the terms of the original
4 contract.

5 Now, would I be correct in assuming that
6 those two concepts frame the possibilities that we are
7 likely to discover in due course, that what emerges is
8 one or the other or somewhere inbetween?

9 MR. B. CAMPBELL: I don't think I'm in
10 any position to deal with that, Dr. Connell.

11 DR. CONNELL: All right, thank you.

12 THE CHAIRMAN: Thank you, Mr. Campbell.

13 Are there parties that wish to speak in
14 support of the adjournment requested?

15 Mr. Shepherd, Ms. Malcolmson and Mr.
16 Mark, Ms. Smith, Mr. Bullock.

17 All right, we will start with Mr.
18 Shepherd, he was first up.

19 MR. SHEPHERD: Well, Mr. Chairman, during
20 the course of the last hour and a quarter we have all
21 been I guess chucking a little bit about Mr. Campbell's
22 submissions, but I assure you that this is not funny.

23 Hydro has been asking for a short
24 adjournment for a few weeks. They are increasingly
25 pleading with you: Please, please, give us a break.

1 Unfortunately, they can't come before you and tell you
2 why.

3 Mr. Campbell comes up to you, he's bound
4 and gagged when he walks up to the lecturn. Well, I am
5 not, so let's just briefly understand what Mr. Campbell
6 can't say.

7 No. 1, Ontario Hydro is obligated by
8 contract to use its best efforts to get this Board to
9 approve the Manitoba transmission as currently
10 requested. We know that, we have seen the contract, it
11 says right in it you have got to do it. It doesn't
12 matter what they think, he has got to do that.

13 Secondly, if Ontario Hydro does not use
14 its best efforts Manitoba Hydro can sue them, not only
15 for their out-of-pocket expenses but also for their
16 loss of bargain and all those other damages straight,
17 you know, first-year contract law, and we are talking
18 about several hundred million dollars or perhaps
19 billions of dollars. We have seen the Manitoba Hydro
20 numbers, we have know what they think they are going to
21 make out of this contract.

22 If Hydro doesn't try to get the approval
23 and do everything they can, if they say the slightest
24 thing to make you think that they don't like this
25 contract anymore, then Manitoba Hydro could be asking

1 them to write a cheque for some great deal of money.

2 However, I think it is also pretty clear
3 from looking at the Hydro documents that there are, to
4 put this at its minimum, a substantial number of people
5 at Ontario Hydro who don't think that the Manitoba deal
6 as currently before you is a good deal anymore, and
7 indeed one might expect that the new load forecast, if
8 it is indeed lower than the previous one, will make the
9 economics even worse.

10 So, against that backdrop Mr. Campbell is
11 essentially asking you to adjourn two things and I
12 think the Board has rightly in its questions
13 distinguished between asking for a deferral of the
14 Northwatch motion and a deferral of the Hydro evidence.

15 Well, let's deal first with the
16 Northwatch motion. If you hear it now then one of two
17 things happens: Either you allow it or you deny it.
18 If you allow it then, again, there are two choices:
19 You allow it with prejudice or you allow it without
20 prejudice.

21 If you allow it with prejudice the
22 Manitoba deal, the Manitoba transmission approval has
23 been denied. That is the effect of allowing that
24 motion with prejudice. Once it has been denied, Hydro
25 writes a cheque to Manitoba Hydro under the contract

1 for 130 or 140 or \$150 million, whatever the number is
2 today.

3 Whatever negotiations they are in right
4 now attempting to deal with that situation, find some
5 sort of deal that doesn't require them to write a
6 cheque, those negotiations are over, they just have to
7 write the cheque.

8 Or, alternatively, you could allow that
9 motion without prejudice. What happens then? Well,
10 Manitoba will legitimately say to Ontario Hydro, the
11 contract still stands, we insist that you now bring
12 another application, ask for approval of the Manitoba
13 transmission. Ontario Hydro has to do it, they know it
14 will take a year or two, but they still have to do it;
15 the contract says they have to, but it's sort of a
16 waste of time, as they well know, because they already
17 believe that approval should not be granted. The
18 economics simply don't justify it, if for no other
19 reason.

20 So all that happens there is they take
21 the other application, they get to the end, they get
22 the expected denial and then they write a cheque for
23 three or \$400 million.

24 Alternatively, you could deny the
25 Northwatch motion, then what happens? Well, then Hydro

1 has to call its evidence - I'll get to that in a
2 second - and it has to continue to support the Manitoba
3 approval, despite thinking it's a bad idea.

4 Okay. So if they have to call their
5 evidence, what happens then? Well, when Mr. Campbell
6 comes up before you he's not under oath, so he can take
7 a position on behalf of his client, he can be an
8 advocate for a position.

9 When Mr. Snelson comes before you here
10 he's under oath, he doesn't have any choices, he has to
11 tell the truth. So when we start to ask him - and I
12 guarantee you we are going to ask him - when we start
13 to ask him about the current evaluation of the Manitoba
14 contract, he has two choices: Either he avoids the
15 question, and I know that will be difficult for him but
16 he will do his best - I couldn't resist, I'm sorry,
17 [Laughter.] - or he will have to tell the truth which
18 will be, the deal is currently not justified, it should
19 not be approved.

20 Well, that puts him in sort of an awkward
21 position. He is sworn to tell the truth, he has to say
22 what he thinks the truth is, but his own employer is
23 obligated to try to get approval after that evidence.

24 On the other hand, if he avoids the
25 question then we are in the unusual situation where the

1 most significant of the approvals currently before you,
2 the one that has had the most changes is the one which
3 next week we can't talk about. That doesn't seem to
4 make a whole lot of sense. We are having update
5 evidence to bring us up to date on what the situation
6 is now and we can't talk about the biggest of the
7 approvals before you.

8 I am not even going to refer to the load
9 forecast situation which obviously affects everything
10 and is one of the primary reasons to have update
11 evidence but, of course, we won't be able to hear that
12 next week either.

13 So that's why he wants the adjournment.
14 Now, what happens if you grant it? Well, it seems to
15 me, just dealing with Manitoba, one of three things can
16 happen. They can come back and say we have a new deal
17 with Manitoba, here's the new evaluation, please
18 approve it. As you see the economics are now good, we
19 have got all this environmental stuff, we are ready to
20 go. They might even get some people signing on.

21 Secondly, they could say we have a new
22 deal but the nature of this new deal is such we don't
23 need an approval right now, we withdraw that request.
24 Then we don't have to talk about it any more.

25 Or they can say we have no new deal,

1 please decide the matter, please decide it now to stop
2 the bleeding. That you have discussed already. I have
3 talked about it more than I want to talk about it ever
4 again. So I will leave that third point.

5 The second point is the most interesting
6 one though. In the second case where they say we have
7 the new deal we don't need an approval right now, what
8 are they going to do? Well, one thing they might do is
9 they might say we are under a lot of pressure not to
10 proceed with Mattagami in this hearing, to roll it into
11 the co-planning process with Abitibi, so we will do
12 that and that leaves us only with Niagara and we don't
13 think we need a big hearing for Niagara, in fact we
14 don't see anybody opposing it particularly, so as far
15 as we are concerned let's just deal with it in the
16 site-specific and this hearing is over.

17 There is no Northwatch motion, there is
18 no question about it, there is no more approvals before
19 you and the hearing is done.

20 You know the bottom line here is Mr.
21 Campbell comes up here, he's begging you to give him a
22 break. They're under serious pressure, they really
23 need a break, I mean, they are in a lot of trouble.
24 But it appears to me - and I don't mean to be
25 pejorative, I mean to be colourful rather than

1 pejorative - it seems to me that the Board keeps saying
2 to Mr. Hydro - to Mr. Hydro - keeps saying to Mr.
3 Campbell: Shut up, I'm driving; shut up, I'm driving.

4 Well, most of the time that's the right
5 thing to say when you have got a bunch of lawyers
6 standing up in front of you asking for this and that
7 and the other thing, but every once in a while you have
8 to pull over to the curb, and this is one of those
9 times.

10 Those are my submissions.

11 THE CHAIRMAN: Thank you, Mr. Shepherd.

12 Mr. Mark.

13 MR. MARK: Mr. Chairman, as you are aware
14 from the past submissions I have made on behalf of the
15 MEA the MEA has always been and continues to be
16 concerned that the hearing continue as expeditiously as
17 possible to a conclusion. However, in this situation I
18 support Mr. Campbell's request.

19 In the MEA's view we finally have, in
20 this hearing, a confluence of reality in the hearing
21 which have not always proceeded in parallel. And Mr.
22 Campbell calls it, I think, an exquisite moment. I'm
23 not sure I would use those words, but I call it an
24 opportunity to really do some good for the ratepayers
25 of this province and, in the end, that's the

1 constituency that my client represents.

2 While I do not necessarily ascribe to Mr.
3 Shepherd's road map of what the future may hold, I
4 think it is apparent to all that we are in a situation
5 where Hydro has many directions in which to proceed in
6 the next few weeks fortunately with respect to the
7 Manitoba contract.

8 My client's concern is primarily that
9 Ontario Hydro have the fullest possible latitude in
10 doing so and that Ontario Hydro have the opportunity to
11 bring before the Board the request Mr. Campbell
12 proposes to bring before the Board early in the new
13 year. Whether it will or can be successful is another
14 question.

15 But there is no doubt, Mr. Chairman, that
16 as Mr. Shepherd points out there are potentially
17 hundreds of millions of dollars at stake in this
18 matter. That translates into, according to the last
19 rate hearing, even if we were looking at \$200 million,
20 at something in the area of 2 or 3 per cent on rates.

21 [12:25 p.m.]

22 We all know what is happening with rates
23 in this Province.

24 This issue or this hearing after all, Mr.
25 Chairman, is really for the benefit of the public and

1 the ratepayers. We can't lose site of this. And in
2 the MEA's submission, given that the adjournment will
3 be relatively brief in the scheme of things, and
4 certainly in light of Mr. Campbell's undertaking to
5 have the adjournment pre-emptory, the MEA believes that
6 the ratepayers of this province will best be served by
7 permitting Hydro to proceed as they wish to do.

8 The other aspect of the request, Mr.
9 Chairman, deals with the filing of evidence which could
10 clarify for the Board and the parties where Ontario
11 Hydro stands with respect to the Manitoba contract and
12 other issues which continue to be relevant, including
13 for the Northwatch motion.

14 While the MEA has been a supporter of the
15 Northwatch motion, we believe, Mr. Chairman, that if we
16 are going to get the benefit of this evidence we ought
17 to do so now, and the adjournment that Mr. Campbell
18 requests I think does provide us with a far better
19 opportunity to have that evidence filed.

20 So that regardless of the outcome of the
21 motion - perhaps I am being somewhat inarticulate in
22 this respect --

23 THE CHAIRMAN: Now, you mean now sometime
24 after January 5th?

25 MR. MARK: No. As I understand what is

1 going to happen, amongst other things between now and
2 January 5th, we will be getting some type of material
3 from Ontario Hydro relative to the board memo and to
4 the capital review, and presumably relevant to the
5 matters that will be addressed in evidence by Ontario
6 Hydro commencing on the 3rd of January.

7 One of our concerns as you have gathered
8 from Mr. Watson's letter is that there be adequate
9 disclosure of the evidence before that time.

10 As we consider the capital review
11 memorandum more and more it frankly becomes apparent
12 it's almost in the nature of a further update.

13 The original schedule simply, in our
14 view, didn't permit as we got into our correspondence
15 with Mr. Campbell in the past week, did not permit the
16 type of advanced disclosure that would provide for
17 meaningful cross-examination and a meaningful
18 appreciation of the evidence to be called. When you
19 add that consideration to the very practical
20 considerations that Hydro has with respect to the
21 Manitoba Purchase, the Manitoba transmission, we
22 actually feel, Mr. Chairman, that good use could be
23 made use of this time and the parties would be in a far
24 better position to proceed come January 3rd, once we
25 have had the opportunity to get the type of disclosure

1 on the table that we are looking for with relation to
2 the capital review program.

3 And regardless of the outcome of Hydro's
4 question or the Northwatch motion, if the hearing is to
5 proceed we will be in a much better position to do that
6 with the time that we have available to us to work on
7 that.

8 Therefore, Mr. Chairman, taking both of
9 these factors into account, we would support the
10 request for the adjournment, and we also support
11 Ontario Hydro's request that it have the opportunity to
12 present the question to you that it seeks to present
13 early in January.

14 I do not to date of course take any
15 position on that question, but it seems to us to be
16 fair and appropriate and in the interests of the
17 ratepayers to provide Hydro with that opportunity if
18 they consider the presentation of that question to be
19 in the interest of Hydro and the ratepayers of the
20 province.

21 THE CHAIRMAN: That's the question on the
22 Manitoba transmission?

23 MR. MARK: That's correct.

24 THE CHAIRMAN: Manitoba contract.

25 MR. MARK: That's correct.

1 I can't stress for you enough, Mr.
2 Chairman, this involves not only questions of future
3 planning but real and substantial dollars for my
4 clients and for their ratepayers at the end of the day.
5 And if this hearing ultimately is to keep the interests
6 of that constituency in the forefront as it proceeds,
7 and given the duration of the hearing, we think it
8 would be, putting it charitably, anomalous if the
9 momentum of the hearing was to be seen at all as
10 adversely impact Ontario Hydro's ability to effectively
11 deal with and hopefully minimize the potential hundreds
12 of millions of dollars of cost to the ratepayers of the
13 province.

14 With respect to the schedule that Mr.
15 Campbell proposes, Mr. Chairman, I am substantially in
16 agreement with it.

17 I would add this, however, and it is not
18 an issue that Mr. Campbell has dealt with. As I
19 understand Mr. Campbell's positions in the past, he
20 doesn't get involved in the question of the filing
21 dates of intervenor evidence, he views that a matter
22 between the intervenor and the Board, a position that
23 sometimes escapes me, but nonetheless he hasn't
24 addressed it in his submission to you.

25 In my submission, Mr. Chairman, if we

1 view this adjournment, in part at least, as permitting
2 the opportunity to receive the updated load forecast
3 and to get illucidation on what now appears to be both
4 the plan and the rationale for the plan as advanced by
5 Ontario Hydro, the filing dates for the evidence that
6 has not yet been filed should be deferred by a
7 corresponding period of time.

8 The subject Panel 2 evidence has long
9 since been filed. We are all in a position to proceed
10 with that. But given that we are going to be asking
11 large questions and getting substantial information on
12 substantial amendments to the DSM plan, to the load
13 forecast, amongst other things, Mr. Chairman, it would
14 seem appropriate to us to defer those dates by a
15 similar period of time.

16 For those parties who wish to file now
17 because they are of the view that they want to get it
18 down while it's afoot for them, they are at liberty to
19 do so.

20 For those of us where these issues,
21 including DSM and the load forecast, are becoming more
22 and more critical as the world progresses as it has
23 lately, it's obvious that certain issues, DSM and load
24 forecast are paramount among them, have become more
25 critical, certainly for the MEA they have, and we think

1 it would be inefficient and inappropriate for us not to
2 have the opportunity to review this further evidence
3 before filing that evidence.

4 It may be that nothing has changed and
5 that will be the fine, but if things have changed we
6 will need the opportunity to respond to it. It's more
7 efficient to do it this way than basically working out
8 our contracts with the experts and then trying to
9 reopen, to have addenda filed later when there may be
10 no need.

11 Subject to your questions, those are my
12 submissions.

13 DR. CONNELL: Mr. Mark, it's the same
14 question that I put to Mr. Campbell. Given our ruling
15 of last July on the IPPSO motion and given the
16 relevance of the matters you have just cited, demand
17 management, the forecast and other matters, do you
18 think that we can responsibly address the question that
19 Mr. Campbell has put on Manitoba without hearing your
20 evidence and that of other parties on those broader
21 subjects?

22 MR. MARK: Let me say firstly, I will
23 give you some observations, but, Dr. Connell, my basic
24 submission is that if Ontario Hydro believes that this
25 is the way it wants to endeavour to proceed with

1 respect to the Manitoba approval issue, it is the MEA's
2 position that they should be permitted to so. The
3 stakes are large enough for the ratepayers, that we
4 should not, in my submission, stand here today, and I
5 say this with all due respect, parse whether or not
6 that motion is likely to be fruitful.

7 This is a situation where given the
8 realities facing us, we ought to give Ontario Hydro
9 that opportunity.

10 Having said that, I will give you some
11 observations, and I don't suggest to you the MEA will
12 necessarily -- I don't know what position it will take
13 at the end of the day, but it seems to me that arguably
14 there is a difference between the motion as presented
15 by Mr. Campbell and as originally presented by Mr.
16 Shepherd, and that is that if none of the parties are
17 going to support the Manitoba Purchase, it's sort of
18 like - Mr. Justice Saunders will be more familiar with
19 this than you perhaps - what we call in the legal
20 profession a non-suit, if you will, usually brought by
21 the defendant who says it doesn't matter what other
22 evidence there is, there is nothing that could be heard
23 or said or done that could save the matter. In other
24 words, even applying our best speculation to the
25 evidence that could come about, nothing could result in

1 the Manitoba Purchase being approved.

2 I'm not saying to you there isn't such
3 evidence, but it seems to me in theory, at least, Hydro
4 can arguably say let's imagine whatever evidence you
5 want, they will say it should fly, but they say the
6 Board may conclude that unless the sky falls Manitoba
7 Hydro isn't being approved. And, frankly, they should
8 have the opportunity to put that question to the Board.

9 Thank you, Mr. Chairman.

10 THE CHAIRMAN: Ms. Malcolmson?

11 MS. MALCOMSON: Thank you, Mr. Chairman.

12 Although Hydro's notice of motion was
13 inadequate to say the least, Energy Probe supports the
14 motion for adjournment because, first of all, hearing
15 argument on the Manitoba transmission approval as
16 described in paragraph 8 of Hydro's motion and for the
17 reasons outlined by counsel for IPPSO, hearing argument
18 on this approval offers the possibility of reducing the
19 number of issues at the hearing thereby reducing
20 hearing time should the motion for dismissal be denied.

21 We support also because Energy Probe
22 wants to hear the rationale for the recent changes to
23 Hydro's plan before the motion is heard, and because
24 Energy Probe wants to hear all of Hydro's evidence
25 before we testify. This would include such matters as

1 the new load forecast, the new business plan and the
2 outcome of negotiations regarding the Manitoba
3 contract.

4 This support though is wholly contingent
5 upon a delay in the presentation of intervenor
6 evidence. If Panel 2 is not rescheduled to follow the
7 last item on Hydro's proposed attached to their motion,
8 Energy Probe recommends that the Northwatch motion be
9 heard today.

10 Thank you.

11 THE CHAIRMAN: Mr. Bullock?

12 MR. BULLOCK: Mr. Chairman, it's a
13 qualified support for Hydro's request.

14 CNA would support the request, Mr.
15 Chairman, on the strict provisos that the adjournment
16 be pre-emptory, as you have suggested, and also on the
17 strict proviso that Panel 2 proceed on and that the
18 filing deadlines be kept.

19 I find myself, Mr. Chairman, in the
20 position of Mr. Rogers and the Natural Gas
21 Association --

22 THE CHAIRMAN: Proceed all next week is
23 that what you mean?

24 MR. BULLOCK: That's correct, sir.

25 THE CHAIRMAN: Preceded by Hydro's

1 evidence or not preceded by Hydro's evidence?

2 MR. BULLOCK: Not preceded by Hydro's
3 evidence.

4 THE CHAIRMAN: But the scheme that we
5 developed was that you couldn't really do Panel 2
6 without having had Hydro's evidence first.

7 MR. BULLOCK: I understand that from Ms.
8 Morrison's letter of Friday. But certainly in Mr.
9 Campbell's submissions this morning, I did not
10 understand him to say that the Panel 2 witnesses would
11 be affected by these Manitoba considerations.

12 THE CHAIRMAN: No. But there is broader
13 issues than just Manitoba involved in the evidence
14 that's going to be given.

15 MR. BULLOCK: There are, Mr. Chairman.
16 And in any event CNA is fully prepared to argue the
17 Northwatch motion today and were ready last Monday as
18 well.

19 With respect to the Manitoba analysis,
20 Mr. Chairman, in paragraph 8 of Mr. Campbell's
21 submission, CNA does not agree with that analysis. CNA
22 supports the analysis in the Board's decision on the
23 IPPSO motion from July of this year.

24 THE CHAIRMAN: Thank you, Mr. Bullock.
25 Mrs. Smith?

1 MRS. SMITH: Mr. Chairman, I think that
2 my concerns have been addressed by the questions of
3 some of the other lawyers, so I wouldn't have a concern
4 right at this minute. Thank you.

5 THE CHAIRMAN: Is there anyone else that
6 wishes to speak in support of the adjournment before I
7 ask Mr. Greenspoon to speak?

8 Mr. Greenspoon?

9 MR. GREENSPOON: I want you to know,
10 firstly, Mr. Chairman, that when I agreed with Mr.
11 Campbell's draft letter to the Board, it seems like
12 years ago, I know it was only a week ago, the draft
13 letter about what has been called the ADR, alternative
14 dispute, or ADM, whatever it is - you know what I am
15 talking about, what we spent last week doing - we
16 agreed that I would only consent to adjourning my
17 motion if he didn't ask for an adjournment for further
18 evidence.

19 Now, the reason I raised that issue with
20 him at the time was because of the Municipality of
21 Metropolitan Toronto and Joint Board case, the case
22 that I cited and you probably read, that I filed with
23 the Board, where it is clear that the Board gave the
24 proponent 30 days to perfect their undertaking, and I
25 said to Mr. Campbell, I don't want this happening

1 because I want the motion to be argued. If you want
2 this alternative mechanism to work, I will only agree
3 to adjourning the motion on that condition.

4 So now here he is and he wants an
5 adjournment.

6 THE CHAIRMAN: But he wants it for other
7 reasons, you recognize that.

8 MR. GREENSPOON: Well, I submit and maybe
9 you can revisit that question in your mind, I won't
10 dispute that with you. That, on its face, may be true.
11 I think, in essence, though, it's the same thing, he is
12 try to perfect his undertaking.

13 I also want to remind the Board that
14 initially when I filed this motion, I asked for an
15 abridgement of the time. Actually, as I recall, it was
16 a discussion between Ms. Morrison and I whether
17 possibly we could do. She got back to my after I
18 gather getting instructions from the Board that it was
19 too big an issue to abridge the time.

20 But the point is that it has been
21 adjourned a number of times already, and I just think
22 that the principle that I have heard many judges say is
23 that all dates are pre-emptory. I mean, you put the
24 word "pre-emptory" on a date, but the courts have to
25 control their process. And I submit this is the date

1 to argue the motion.

2 This is the longest argument that I have
3 ever heard on an adjournment.

4 THE CHAIRMAN: I have heard longer.

5 [Laughter.]

6 MR. GREENSPOON: It's the longest in my
7 experience.

8 We have been objecting to the undertaking
9 and the amendments to the undertaking and raising
10 actually the issue of the non-suit or early dismissal
11 since January of 1992.

12 I disagree with remarks that have been
13 made over the past that this is -- on its face again it
14 is a public matter. But some of us are in different
15 positions than others. And Northwatch is in jeopardy
16 and that is why we are prejudiced by this motion not
17 proceeding today.

18 My clients are in jeopardy from
19 transmission corridors, from nuclear reactors, from all
20 of the approvals that Hydro is asking for in our area.

21 I think nobody has mentioned yet today
22 that we are not just dealing with Manitoba, Beck and
23 Mattagami. We have got a proponent, at lease one
24 proponent who I understand may have even filed notice
25 that they have got their own undertaking that they want

1 this Board to approve.

2 [12:45 p.m.]

3 I think that the logical conclusion is
4 that Hydro can start their separate EAs and withdraw
5 this undertaking.

6 Mr. Campbell is like the can of Klik that
7 when they say, say moo, he can't say it, can't say moo
8 because it's not in him. [Laughter.]

9 And the words 'withdraw the undertaking'
10 just aren't in Mr. Campbell. [Laughter.]

11 In paragraph 6 - I have heard Mr.
12 Campbell say this a lot of times, he has it right in
13 paragraph 6 - the motion on its face does not provide
14 any specific focus on the matter of the approval
15 requested for Manitoba transmission. That's because it
16 is not relevant to the motion.

17 He can call whatever evidence he wants on
18 the motion. The rules say that he should file it by
19 affidavit. He hasn't even filed an argument on the
20 motion.

21 He could file an affidavit setting out
22 what he wants to set out and we would have to get leave
23 to cross-examine and he would have a good argument why
24 we shouldn't get leave, that the motion should proceed.

25 The essence of a non-suit, Mr. Chairman,

1 is that we won't call any additional evidence. The
2 essence of a non-suit is that the case is closed.

3 I asked Mr. Campbell, he called me -- I
4 drove down as I said yesterday - and I don't want to
5 belabour the distances or any of that - I asked Mr.
6 Campbell last night, we talked for a long time on the
7 phone to try and resolve this issue. I asked him last
8 night if I could see these letters from Manitoba Hydro.
9 I haven't seen them. He's asking for an adjournment
10 based on a news release. Now, this Board has commented
11 on news releases before.

12 I disagree with Mr. Campbell, if in fact
13 the third paragraph of the news release reflects the
14 four reasons, that the first reason is a reason at all
15 or a condition at all. The first condition talks about
16 net present value benefits of the deferral. I don't
17 think there are four reasons, I think there are three
18 reasons. But anyway I think it's academic. I would
19 like to know, I would like to know, what did Manitoba
20 Hydro really say in their letter to Ontario Hydro.
21 That would have certainly made it easier for me to know
22 what was going on today. Mr. Shepherd made some
23 speculations. I'm not sure.

24 If it's hundreds of millions of dollars
25 that we are talking about, Mr. Chairman, how does that

1 relate to the environmental assessment that Hydro filed
2 in 1989. Are we concerned with this motion in
3 protecting Ontario Hydro's financial interest; is that
4 what an environmental assessment is? My submission is
5 the amount of money, if it was tens of billions of
6 dollars, wouldn't matter. We have got a legal issue
7 here on a non-suit based on the evidence. If this
8 undertaking is flawed it's flawed, it doesn't matter
9 about Manitoba.

10 Whether counsel for Manitoba Hydro is
11 here or not, Mr. Chairman, I don't see that it's
12 relevant.

13 Again, Mr. Chairman, the relevance of the
14 forecasting is not relevant to the motion, it's not
15 connected to the motion. He could have filed viva voce
16 evidence or he could have filed affidavit evidence
17 about what his forecast might have been or how that
18 might have changed the motion. We haven't heard any
19 evidence from Ontario Hydro why any of these things are
20 related to the motion. This is the way Ontario Hydro
21 has been behaving for the whole hearing: Give us more
22 time, give us more time.

23 And Mr. Campbell is not correct, I didn't
24 bring the motion based on the October or September
25 memorandum, I brought the motion as soon as I could

1 prior to calling any evidence. This motion would have
2 been brought regardless of the those two board
3 memoranda.

4 The reason there is no focus on Manitoba
5 is we don't know what Ontario Hydro wants. We don't
6 really know right today if Ontario Hydro really wants
7 Manitoba or not.

8 I don't agree with Mr. Campbell's
9 submission that the granting of the relief asked in the
10 motion, assuming that you dismiss the undertaking,
11 assuming that you dismiss the application, that that's
12 a denial of Manitoba because as is cited in my record,
13 many of the cases that I refer to, it's almost trite
14 law, although I hate using that, I hate when people say
15 that, but all of the cases, some of which Ms. Patterson
16 sat on, pointed out the two stages of an environmental
17 assessment.

18 And it is the first stage. We haven't
19 even gotten to the first stage. So our submission is
20 you can't even accept this as an environmental
21 assessment. So it doesn't matter, you are not denying
22 approval of Manitoba, you are not accepting the
23 environmental assessment.

24 Now, even if we answer these questions on
25 Manitoba I want to raise the issue of the nuclear

1 lobby. What do we do about the nuclear options? We
2 are not just left with Mattagami and Beck, everything
3 is still on the table and how can you really, how can
4 you really weigh, as Dr. Connell asks, how can you
5 weigh Manitoba?

6 How can you even -- I don't even think, I
7 would submit, you have jurisdiction to be asked those
8 questions or to answer those questions that Hydro puts
9 to you. Where are those questions found? How do they
10 fit into Section 5 of the Environmental Assessment Act.

11 In relation to that somebody is going to
12 oppose those questions. We already have heard Mr.
13 Bullock is opposing them. We didn't hear from Mr.
14 Hamer. I would bet his client will oppose them as
15 well.

16 So then we are back where we were before,
17 in January, and I am not clear from the discussion
18 whether Hydro wants the evidence before the motion, and
19 I would vehemently oppose that for obvious reasons,
20 that we can't hear any more evidence, the motion has to
21 be heard on Hydro's case and Hydro's case is closed.

22 Sorry, yes.

23 THE CHAIRMAN: That of course would be
24 right if we were dealing with a civil lawsuit, but do
25 you not think that there is perhaps some more

1 flexibility in a process of this kind where we have to
2 deal with the world as it changes and that Hydro
3 clearly can't be precluded from bringing in further
4 evidence from now on and the 1992 forecast is a good
5 example of that.

6 I mean, we couldn't just pretend the 1992
7 forecast doesn't exist. It would be completely absent
8 from reality, I would think, to do that.

9 So I would have some difficulty and
10 that's why I think -- I would have some difficulty in
11 saying that you have to be draconian about what
12 evidence Hydro can or cannot call. There may be some
13 limits on it. I do take the point that they haven't
14 called any in support of this motion, or as responding
15 to this motion. I understand that.

16 MR. GREENSPOON: Yes. No, generically I
17 agree with your statement, Mr. Chairman. In these
18 types of hearings, the rule should not. But Mr.
19 Campbell has to make a connection between this evidence
20 and the motion, and I thought that you addressed that
21 issue in your questions to him: How is this relevant
22 to that Northwatch motion, given that the Northwatch
23 motion is a blanket motion, it says the undertaking
24 fails regardless -- I wouldn't go as far as Mr. Mark's
25 analogy --

1 THE CHAIRMAN: That's a different point.

2 I understand that.

3 MR. GREENSPOON: Yes. That's my point.

4 No, I agree, in a public interest hearing we can't
5 stick by those rules.

6 I am almost winding up here. I would
7 just respond to one of your questions, Dr. Connell. I
8 think we should also imagine -- you said: Well, we
9 will be somewhere between the original contract and a
10 five-year deferral. It could be outside of those as
11 well, it could be a 10-year deferral, it could be a
12 15-year deferral. So it may be a lot different than
13 just somewhere between an original contract and a
14 five-year deferral.

15 All Hydro is asking for today by the
16 October 19th memo is to look into a five-year deferral.

17 I don't agree with Mr. Shepherd's with
18 and without prejudice. I don't see this Board being
19 able to make an order that is with prejudice. This
20 Board has no power over another Board. If Hydro wants
21 to file another application they can, I don't think you
22 can make an order that restricts them from doing that.

23 I think Mr. Shepherd's submissions all
24 are very nice if we didn't have pro-supply parties to
25 this hearing. Again, I raise the issue of the

1 pro-supply parties will be here, this hearing won't be
2 over after this Hydro evidence, we are going to have a
3 long protracted nuclear power inquiry.

4 I think Mr. Mark has it wrong as well.
5 You can't imagine evidence on a non-suit, you take the
6 evidence that you have. And for Mr. Mark to say he
7 represents the ratepayers, is no more true than I
8 represent the ratepayers. So I think the 2 or 3 per
9 cent rate is totally irrelevant, whether the rates go
10 up, any of this amount of money is irrelevant to the
11 motion.

12 I think those are my submissions. Thank
13 you.

14 Oh, just let me make the one clear point,
15 that I will object to evidence being called before the
16 motion and I think the discussion has been leading that
17 way. If you want to hear from me more on that...

18 THE CHAIRMAN: Yes, I do because that's
19 one of the options that we have. That's the Hydro
20 proposal.

21 MR. GREENSPOON: Yes, all right.

22 THE CHAIRMAN: That the evidence that
23 they propose to bring be heard before your motion is
24 heard. So I think if you are objecting to that, this
25 is the time to do it.

1 MR. GREENSPOON: Well, with respect, Mr.
2 Chairman, I would ask that I deal with that issue
3 tomorrow.

4 Well, in fairness, Mr. Chairman, I was
5 prepared to argue the motion today. Hydro is now
6 asking for an adjournment and now, not only are they
7 asking for an adjournment, but they want to call their
8 evidence before my motion. That's a whole other issue.

9 If you are satisfied that there has been
10 a connection made by Ontario Hydro, that all they have
11 to do is raise the issue that there may be some
12 relevance to their evidence to the Northwatch motion, I
13 think we have to hear or at least see an affidavit of
14 what that evidence might be and then determine how that
15 might relate to the Northwatch motion.

16 On its face he hasn't raised any issue
17 except saying it relates. So far all his evidence
18 relates to is monetary issues with respect to Manitoba,
19 and it's my submission you can't hear those things in
20 respect to the Northwatch motion.

21 THE CHAIRMAN: First of all, I take your
22 point that you made and had a discussion about a few
23 minutes ago that in the context of your motion that it
24 should be at the evidence as it then stands and that it
25 would have been open to Mr. Campbell in response to

1 your motion to have put in evidence by way of affidavit
2 or however appropriate, in fact that was the subject
3 matter of a request from one of the other parties, if
4 you remember, involving subpoenas.

5 At the suggestion of the Board we asked
6 about a month ago I think that it would be appropriate
7 for Hydro to bring evidence before the commencement of
8 Panel 2 and so Hydro is, in effect, responding to that.
9 And I guess the question really is: Would it be better
10 to have that evidence available and before this panel
11 before we hear your motion, or whether it would be
12 better to hear your motion first and then have the
13 evidence. That's the issue that we are...

14 MR. GREENSPOON: Yes. Well, you said
15 that at the close of Panel 1 and I recall at the time
16 thinking, well, that will be after the motion. You
17 maybe didn't address that at that point.

18 I guess I will just close in answer to
19 that, Mr. Chairman, by saying, let him tell us how it
20 relates by giving us an affidavit of what it might be.

21 THE CHAIRMAN: Well, I think what it's
22 going to be, at least what it's supposed to be in broad
23 terms is how the events that have occurred since last
24 June fit in with the evidence that was given on Panel
25 10 and, in addition to that, how the 1992 load forecast

1 about to be issued impacts on the evidence that has
2 already been given by Ontario Hydro.

3 MR. GREENSPOON: Okay.

4 THE CHAIRMAN: I think those are the
5 matters and I guess the question is: Would it be
6 better to have that before or after your motion. And I
7 take it your position is that it would be better to
8 hear your motion first, in fact, you take the
9 position --

10 MR. GREENSPOON: I could take a middle
11 position on this proviso; I'm still arguing against the
12 adjournment, I'm ready to go on the motion.

13 If you grant the adjournment, my
14 suggestion then is the more appropriate methodology
15 would be to make Mr. Campbell's evidence his evidence
16 on the motion. So we would hear my motion on the first
17 day back at the hearings, in reply I would waive my
18 right or waive the requirement of affidavit evidence,
19 he would call the evidence viva voce, we would
20 cross-examine. That way it's without prejudice to the
21 motion.

22 THE CHAIRMAN: Well, that's a little
23 different than the normal motion procedure, you
24 understand that.

25 MR. GREENSPOON: Yes.

1 THE CHAIRMAN: The normal procedure is
2 that all the material is put in before any argument
3 occurs.

4 MR. GREENSPOON: Yes. Well, there would
5 be no argument until after we heard this evidence, then
6 that evidence could be applied to the record.

7 THE CHAIRMAN: But all the evidence that
8 you intend to put in is now here; is that not right?

9 MR. GREENSPOON: That's fine. I would
10 still have the right of reply and cross-examination.

11 THE CHAIRMAN: Well, there's no question
12 about the cross-examination part.

13 MR. GREENSPOON: Yes.

14 THE CHAIRMAN: What I would like is that
15 there be a broader focus on the evidence, that is, it's
16 not just evidence with respect to this motion, it's
17 evidence which is for the entire hearing.

18 MR. GREENSPOON: But it's a Catch-22
19 because if the evidence doesn't relate to the motion
20 that shouldn't be heard before the motion.

21 MS. PATTERSON: As I understood the
22 Municipality of Metropolitan Toronto case and decision
23 on the judicial review, one of the factors that the
24 court thought made the process fair was the board
25 allowing the proponent to put in, or to have a certain

1 amount of time to put in any evidence that it wanted to
2 put in before the motion was heard.

3 So don't you think that there is some
4 obligation of fairness to allow that?

5 MR. GREENSPOON: Unfortunately I wasn't
6 able to get back across the street. They got the
7 records for me from the hearing. When you read the
8 decision it's not really -- my understanding is it
9 wasn't 30 days before the motion, it was 30 days before
10 the original board decided to throw it out.

11 In any case, as I said, Mr. Campbell and
12 I discussed that issue and agreed that he didn't need
13 to call any further evidence, that he would hear the
14 motion without that requirement to perfect his
15 undertaking.

16 So I agree with you, Ms. Patterson, it
17 would be fair and I would agree that Hydro, if you
18 grant the motion for adjournment, Hydro be allowed to
19 call evidence, but it should only be called on the
20 narrow issues that relate to the motion. Then later
21 let them call their other evidence.

22 Mr. Campbell should have to show how this
23 relates to the motion. The best way to restrict him to
24 do that is to call the evidence during the motion.

25 DR. CONNELL: Mr. Greenspoon, the

1 affidavit submitted with your motion refers to several
2 events in recent months which are now dealt with in
3 exhibits that are before us but have never been subject
4 to cross-examination.

5 I understood you to say in your argument
6 that you would have moved this motion anyway, but I
7 think if you take out those recent developments it
8 becomes more difficult to distinguish between the case
9 that you are making and the case that we considered
10 last April in response to the MEA motion which was
11 based largely on Exhibit 452.

12 It seems to me that a proper
13 understanding of the case that you are bringing really
14 does depend on hearing, in a good more detail, the
15 evidence of the events that have happened more recently
16 and, in fact, having cross-examination there, too.

17 MR. GREENSPOON: Yes, I agree with you,
18 Dr. Connell. That was my last point. If they want to
19 call evidence on the two memoranda, that's fine. I
20 don't see how Hydro's evidence on Manitoba relates.

21 In answer to the more general question,
22 the difference between this motion and MEA's motion and
23 why I didn't support MEA's motion is Hydro's case
24 wasn't over. You can't have a non-suit when Hydro is
25 still bringing -- they hadn't called Panel 10 yet and I

1 didn't support their motion because I thought it was
2 premature. This is different.

3 You are right, those last paragraphs in
4 the affidavit enhance the grounds for the motion. I
5 would have been foolish not to have relied on those,
6 but I would have still brought the motion.

7 Thank you.

8 MR. D. POCH: Mr. Chairman, I think I'm
9 the only one left to speak. I would have appreciated
10 the opportunity before lunch so you will have a chance
11 to mull it over.

12 THE CHAIRMAN: Well, I don't think you
13 are the only one left.

14 MR. D. POCH: Oh, I may be wrong.

15 MR. HAMER: The only one named Poch.

16 THE CHAIRMAN: I know you are going to
17 speak. Mr. Rosenberg, you are going to speak.

18 MR. ROSENBERG: Yes.

19 THE CHAIRMAN: Mr. Hamer, you are going
20 to speak.

21 [1:05 p.m.]

22 Anyone else going to speak in opposition
23 to the motion? Anyone else going to speak in
24 opposition to the motion?

25 Well, would you like to go before lunch,

1 Mr. Poch? In which case we will just hear Mr.
2 Rosenberg and Mr. Hamer and anyone who wants to reply,
3 if people can hang in that long, and then we are
4 through with it.

5 MR. D. POCH: Mr. Chairman, I don't have
6 a hard position on that. I just was going to speak
7 largely to this question of whether the evidence should
8 be heard before the motion, and I just wanted my
9 comments to be contiguous with Mr. Greenspoon's. I am
10 easy as to whether they are now or after lunch.

11 THE CHAIRMAN: Let's do it now.

12 MR. D. POCH: First of all, let me say
13 that I have much agreement with what Mr. Greenspoon has
14 said with respect to Mr. Campbell's rights or not to an
15 adjournment. On the other hand, we are cognizant of
16 the difficult position that the proponent is in and how
17 there is a public policy interest in that. I can tell
18 you I therefore have instructions neither to oppose nor
19 support the request for adjournment at this point.

20 We have quite a concern though with
21 respect to a proposal about how to proceed with the
22 hearing of evidence as it relates to the argument of
23 motion.

24 When Mr. Greenspoon's motion was
25 originally put off until after Panel 1, my recollection

1 is it was clearly on the basis that it was without
2 prejudice. It was a non-suit motion at the close of
3 Hydro's case as it rested at that time and it was
4 without prejudice.

5 What has happened here --

6 THE CHAIRMAN: It was without prejudice
7 to Mr. Greenspoon participating in Panel 1. Mr.
8 Greenspoon I think said I don't want my participation
9 in Panel 1 to affect my motion, and we said that is
10 fine, and I think that was the extent of it. If I am
11 wrong about that, someone can correct me.

12 MR. D. POCH: That may be correct, Mr.
13 Chairman. Your memory is likely better on this than
14 mine.

15 I will tell you this, though. We did in
16 fact ask for subpoenas. We had a discussion with Mr.
17 Campbell. The resolution of that discussion was
18 conveyed to Ms. Morrison and it was this: Mr. Campbell
19 stipulated that the the capital program review could be
20 treated as evidence for the motion and I indicated I
21 wished to argue on that basis. I don't want that
22 situation to be eroded and let me explain why.

23 First of all, I can advise it is likely
24 we will have lengthy cross for Ontario Hydro's people
25 when they take the stand. I imagine ours will not be

1 the longest cross by any means. I imagine it will be
2 very difficult to draw nice, tight lines around what
3 people are able to cross-examine on.

4 We are going to hear inevitably a good
5 deal of evidence on a great many issues. How Hydro's
6 position has changed, how the facts have changed and so
7 on.

8 We don't want to be in the position of
9 having to then argue a motion immediately thereafter
10 with, in effect, a whole new record, a lot of matters
11 that are relatively crisp on the record at this point
12 given Mr. Campbell's assent to treat that document
13 as evidence, we don't want all that muddied.

14 THE CHAIRMAN: All that what, sorry?

15 MR. D. POCH: We don't want this crisp
16 situation muddied. We don't want our task made anymore
17 difficult.

18 Now, I can appreciate the concern, well,
19 if facts have changed facts have changed. We don't
20 want to have the willful suspension of disbelief. But
21 here is the problem we have, we don't have any more
22 funding to wrestle with all this new evidence. That's
23 the reality. We are going to be prejudiced. We are
24 going to be fighting whatever new evidence comes in
25 with a hand behind our back.

1 Now, we do understand that there might be
2 a public interest, if the Northwatch motion is to
3 succeed there may be a public interest in the Board
4 being able to decide the Manitoba issue in particular
5 on a tighter basis, on the merits, if you will, to be
6 able to say with respect to Manitoba, it is dismissed
7 outright, if you will, having weighed evidence.

8 That would, in essence, end Hydro's
9 misery, put a stop to the penalty clock, otherwise
10 there is a concern that Hydro would be obliged, as Mr.
11 Shepherd says, to go on to seek a project-specific
12 approval and the clock would continue to run. It sort
13 of reminds me of a patient who either wants to be cured
14 or to die, he would rather not be left in limbo hoping
15 for a miracle cure in the future, but yet he can't
16 reach the plug either. So I think there may be that
17 exception, but I think that would have to be carved out
18 finally if there is to be evidence heard so that the
19 Board is in a position to deal with Manitoba on the
20 merits.

21 That is our concern with respect to the
22 hearing of evidence before the motion. We are in a
23 very difficult position. We feel we will be prejudiced
24 in terms of our ability to deal with that evidence.

25 Now, there was also a suggestion made by

1 the MEA, I believe, to extend the filing date for
2 evidence in the interim. For the same reason that I
3 have just spoken of, we would resist any extension to
4 filing dates for the filing of the evidence in the main
5 case.

6 Other parties here have deeper pockets
7 than my clients. Some funded parties and some
8 non-funded parties have other sources of revenue they
9 can direct at this case. We are not in that position.

10 The longer this goes on, the more that
11 they are going to rally around and bring in layers and
12 layers of new evidence which we have no capability to
13 deal with.

14 So we would strongly urge that the Board
15 not put itself in the position of having yet another
16 round of evidence which will just extend the hearing
17 and make our plight more difficult.

18 THE CHAIRMAN: What you are really saying
19 is, or at least let me see if I have got it right, we
20 should hear the Northwatch motion on the basis of the
21 memorandum that was attached as an exhibit to Mr.
22 Argue's affidavit.

23 MR. D. POCH: Which Mr. Campbell
24 stipulated could be treated as evidence.

25 THE CHAIRMAN: Yes, and which Mr.

1 Campbell stipulated could be treated as evidence. And
2 we should not hear the evidence, the supplementary
3 evidence, and then we would go on and dismiss this
4 whole hearing without having heard Hydro's evidence.

5 Now, I understand the technical arguments
6 alluded to before, the civil case, and there has been a
7 stop at some point. But I personally would feel a
8 little uncomfortable with that kind of scenario.

9 What would have been is that Hydro had
10 evidence they wanted to put forward, they weren't
11 permitted to do it and then their whole application was
12 thrown out with all the implications that that implied.

13 That doesn't quite sit well with me, I
14 don't think.

15 MR. D. POCH: Mr. Chairman, if the motion
16 is not granted ultimately, if the Northwatch motion is
17 not granted, then certainly --

18 THE CHAIRMAN: No, no. I am thinking if
19 the motion is not granted there is no problem, then
20 everything goes along.

21 It is the problem the other way. If the
22 motion is granted and the evidence hasn't been
23 considered, I would feel a little bit uncomfortable
24 with that.

25 MR. D. POCH: I don't want to argue the

1 motion proper, but I would say this. Part of our
2 argument on the motion is that for the Board to carry
3 on with the hearing, and I think this argument applies
4 equally to the hearing of further evidence at this
5 point, prejudice, is it, if you will, a natural justice
6 issue. We prepared for this hearing based on a certain
7 rationale, we cross-examined based on a certain
8 rationale, we have got funding based on a certain Hydro
9 rationale, we did interrogatories based on a certain
10 Hydro rationale, we are out of money and Hydro is
11 coming forward with a different rationale.

12 I am not saying, and it won't be my
13 argument, that that rationale may not -- and for all I
14 know that rationale may be quite appropriate and would
15 support project-specific approvals. My argument will
16 be that project-specific approvals aren't before you
17 and the new rationale are project-specific.

18 THE CHAIRMAN: But that argument, if I
19 understand it correctly, isn't impaired one way or the
20 other by Hydro bringing in additional evidence or not.
21 That argument, I would think, would not be diluted.

22 MR. D. POCH: We will have a record which
23 has now been changed by the addition of new one-sided
24 evidence. Hydro will have an opportunity to lead new
25 evidence, in effect, reopen their case, take it from

1 load forecast to planning, Demand/Supply Plan
2 balancing, and we are not in a position to counter-
3 balance that new evidence. So it's question of our
4 being prejudiced by not being able to deal with that
5 new evidence, and that's the difficulty we find
6 ourselves in.

7 THE CHAIRMAN: The other thing that
8 puzzles me a little bit is why people object to
9 extending filing dates. After all, you don't have to
10 wait until the last day to file, you can file when it's
11 convenient in your own interest to file. And the
12 extension the filing dates shouldn't prejudice anybody,
13 I wouldn't have thought.

14 MR. D. POCH: It's a question of our
15 competitive position, if you will, relative to other
16 parties.

17 At this point when we have run out of
18 money, the longer things go on, the more other parties
19 are in a position to offer you evidence which now deals
20 with new and changing circumstances and the staler our
21 evidence gets, and we are not in a position to remedy
22 that.

23 We would like to have the issues decided
24 based on fresh evidence from both sides, just as fresh,
25 and we can't play that game. That's our problem. It's

1 really a practical problem from our perspective.

2 THE CHAIRMAN: Now I don't want to
3 inhibit either Mr. Rosenberg or Mr. Hamer or anyone
4 else including Mr. Campbell who may have some reply, so
5 I think we will take a break. We have been here for
6 now two and a quarter hours.

7 We will take a break for one hour, if
8 that's agreeable to everyone, and we will come back at
9 2:15.

10 ---Luncheon recess at 1:15 p.m.

11 ---On resuming at 2:20 p.m.

12 THE CHAIRMAN: Be seated, please.

13 Mr. Rosenberg?

14 MR. ROSENBERG: Thank you, Mr. Chairman.

15 To let you know where my sympathies lie,
16 not only is the CAC opposing this motion, they will be
17 opposing the Northwatch motion.

18 My instructions from my client are very
19 simple and straightforward, and that is we should get
20 on with the motion, get on with the case.

21 The issue, as I understand it, is a
22 little different than has been put before you by Hydro
23 and the other parties.

24 I was listening to the evidence and I
25 thought, if nothing else, Mr. Campbell was very

1 effective at getting to speak first on somebody else's
2 motion this morning.

3 What I understand from the materials and
4 from a close reading over lunch, what Hydro is really
5 asking is this --

6 THE CHAIRMAN: He was moving for an
7 adjournment. That's not unusual for the person who is
8 moving for an adjournment to get to speak first.

9 MR. ROSENBERG: Fair enough. It's a
10 question of what the issue was before the Panel.

11 Hydro says in their material that what
12 they want is that their motion either be heard before
13 Northwatch's motion or concurrently with it, and that
14 Hydro wishes to use the evidence the Board directed it
15 to produce on the return of Hydro's motion and not
16 Northwatch's motion.

17 When I read this, that's a very important
18 distinction. It says:

19 There is a motion by Ontario Hydro for
20 further and amended directions from the
21 hearing panel on the schedule of the
22 hearing of the Northwatch motion and
23 related matters, and the additional
24 Ontario Hydro evidence requested by the
25 hearing panel.

1 When I get into my submissions I am going
2 to take you through Hydro's submissions because the
3 effect of it is this: Hydro is not asking that the
4 material and evidence that you requested be used on the
5 Northwatch motion. It's that their motion should be
6 heard at the same time or before Northwatch's motion,
7 and that they are going to use the evidence that you
8 have directed be heard for their motion.

9 It will be my submission that Hydro's
10 motion is a necessary subset or the issue raised in
11 Hydro's motion is a necessary subset of the Northwatch
12 motion; in fact, you can't deal with the Northwatch
13 motion without dealing with Hydro's motion, and you
14 don't need the evidence the Board directed to deal with
15 the Northwatch motion.

16 So if I can characterize for legal
17 purposes my submission it's this. The question for the
18 Board is, what is Hydro's motion? And 2, is it a
19 distinct motion or a subset of the Northwatch motion?

20 Clearly, if it's a distinct motion it's
21 within the Board's discretion to queue the motions as
22 you deem necessary.

23 But there is a question, if it is a
24 distinct motion should it be heard before, during or
25 after the Northwatch motion.

1 Now, CAC takes the position that Hydro's
2 motion is in fact a necessary part of the Northwatch
3 motion, they are inextricably intertwined, and what
4 Hydro is doing is asking a question in order to get an
5 answer that will achieve the result they wish, which is
6 an adjournment. But the adjournment is for completely
7 extraneous reasons to the Northwatch motion. It's very
8 clever, but in our submission it must fail.

9 DR. CONNELL: Mr. Rosenberg, when you
10 refer to the Hydro motion, could you be explicit.
11 Exactly what you are referring to, is it Section 8?

12 MR. ROSENBERG: When say the Hydro
13 motion, the Hydro question, I am looking at two things:
14 One is paragraph 8 of Hydro's submission, and another
15 way of characterizing it is on the schedule or the
16 attachment where Hydro sets out -- I am looking at the
17 attachment, it's a very useful summary.

18 First Hydro's wants evidence heard and
19 then that evidence will be used on what they describe
20 as argument on Ontario Hydro's request for
21 determination in relation to Manitoba transmission, and
22 then argument on the Northwatch motion.

23 As I understand the question that Hydro
24 wishes to have argued, it is set out in paragraph 8 of
25 their submissions. And that is, is the evidence --

1 this is 8B, is the evidence on the Manitoba
2 transmission approval such that the hearing panel
3 should deny the approval prior to hearing the balance
4 of the intervenors' evidence.

5 It will be my submission that that is a
6 necessary subset of Northwatch's motion. You can't
7 disentangle the two, and in fact I am going to take you
8 through Northwatch's motion and tie 8B directly to part
9 of Northwatch's motion.

10 What we are doing is it dividing
11 something where there is no division.

12 THE CHAIRMAN: I may not have correctly
13 got Hydro's position, but I thought that Hydro said
14 that inherent in the allowance of the Northwatch motion
15 was a denial of approval of the Manitoba transmission
16 and therefore it was necessary, in order to reach that
17 conclusion, to consider the question that is posed by
18 Hydro on this motion.

19 I also understand - I think I understand,
20 I hope I do - that however the Northwatch motion is
21 disposed of, Hydro wants this Board to consider and
22 rule on the question in 8B.

23 MR. ROSENBERG: Correct. I accept that.
24 That is my understanding as well.

25 My sense of that, Mr. Chairman, is this,

1 the practical effect of this is Hydro is taking this
2 omnibus question, which is Northwatch's question about
3 dismissal, and they are parsing out this little
4 question about the Manitoba Purchase, and could you do
5 that on any specific issue in the Northwatch motion and
6 say, well, we better have a separate motion about
7 Manitoba, we better have a separate motion about
8 Niagara, about demand management, about what is the
9 undertaking, about what the methods are. And I say it
10 is a very clever way of dealing with it, but that's all
11 that it is. Because the question in 8B is one of 20 or
12 30 or 100 questions that are a necessary subset of the
13 Northwatch motion.

14 To deal with that point --

15 THE CHAIRMAN: But I take it if it is in
16 the context of the Manitoba situation that Hydro would
17 like and answer, if it's at all possible to give one,
18 on that B question.

19 MR. ROSENBERG: But you will give that
20 answer when you deal with the Northwatch motion.

21 THE CHAIRMAN: That's right.

22 MR. ROSENBERG: And you will give an
23 answer on -- you could make 10 questions out of it or
24 100 questions.

25 THE CHAIRMAN: I don't think that they

1 are interested in the other questions. Maybe they will
2 have to be considered, I don't say they won't.

3 For instance, if we just take an example,
4 if we dismiss or allow... My mind perhaps is not
5 working too well. But if we dealt with the Northwatch
6 motion in one line, that would not be sufficient.
7 Hydro would like us to specifically address the 8B
8 question.

9 MR. ROSENBERG: If I can answer it this
10 way. In order to answer 8B you can't answer it in one
11 line.

12 THE CHAIRMAN: I am talking about the
13 Northwatch motion in one line, either allow or dismiss.

14 MR. ROSENBERG: Yes, you can deal with it
15 in one line. Of course you wouldn't be giving reasons.

16 What Hydro is asking for is really - and
17 I think you put your finger on it, Mr. Chairman - they
18 are bringing a motion to demand that the Panel give
19 reasons with respect to one matter subsumed in the
20 Northwatch motion.

21 THE CHAIRMAN: That's right.

22 MR. ROSENBERG: And that is what they are
23 doing. And in our submission, for that reason it must
24 fail, because the Northwatch motion encompasses all of
25 the issues that Hydro is dealing with before this

1 Board. And second, Hydro is not asking for any
2 evidence on the Northwatch motion. They are asking for
3 evidence on their own motion and I say, and I will get
4 to this, their motion is irrelevant or their question
5 is irrelevant, immaterial and highly prejudicial.

6 [2:30 p.m.]

7 Northwatch has a right to have their
8 motion heard. It will be our position that it should
9 be dismissed, but they have the right to have it heard
10 for the following reasons.

11 One, we have to ask what's the Northwatch
12 motion? Well, it's a motion to dismiss. It's what
13 civil lawyers call a non-suit and criminal lawyers call
14 a directed verdict, and is it appropriate to bring it
15 now? Yes, Hydro has concluded its case.

16 So the next question is, if it's
17 appropriate now, can it be adjourned? Well, of course,
18 it can be adjourned, there are no absolutes, but it's
19 my understanding - and if Mr. Greenspoon doesn't like
20 the word trite law - maybe I can say known law, that
21 you bring a non-suit or a motion for a directed verdict
22 when the applicant's case is closed. There is always
23 an opportunity in any proceeding to put new evidence
24 in.

25 But what's clear about the case law on

1 non-suits and directed verdicts, they discourage people
2 from prospecting in the future, prospecting as to what
3 may be, what ifs and so on, because if you don't have a
4 very rigid rule there isn't a respondent to a Notice of
5 Motion for a non-suit or directed verdict who won't say
6 Ah, but wait til my cross-examination, wait til my
7 reply evidence, wait til my argument. I think I have
8 some new evidence I want to put in.

9 It's quite clear you take the record as
10 you find it and the court when looking at the issue,
11 and to paraphrase very broadly, you have to determine
12 that there is no reasonable possibility or reasonable
13 chance that the applicant will be successful, whether
14 it's a criminal case or a civil case.

15 So the issue that you will be faced with
16 on the Northwatch motion - I'm sure you will hear great
17 argument on this - is, does Hydro have any reasonable
18 chance for success in its application? Our position is
19 conclusive that they do and, therefore, the hearing
20 should continue and Mr. Greenspoon I'm sure will urge
21 you to the contrary.

22 Let's look then at what Hydro is saying.
23 Let's forget for a moment which motion Hydro wishes to
24 use the evidence for, whether it's their question or
25 the Northwatch motion.

1 If you accept Hydro's view that more
2 evidence is required, I submit that the panel has to
3 ask itself some questions about that evidence. How
4 will it help you in determining the Northwatch
5 question? Is the evidence imminent, is it certain, is
6 it expected to be conclusive?

7 And I suggest that on all grounds it's
8 neither imminent, certain or expected to be conclusive
9 because, Mr. Chairman, you pointed out yourself that
10 what can we really expect to occur between now and
11 January 5th.

12 Hydro is going to have a Board meeting on
13 December 14th and is it reasonable to assume that
14 between December 14th and January 5th that Manitoba
15 Hydro and Ontario Hydro are going to solve this
16 question? I suggest it's not and I suggest that what
17 Hydro is really arguing is that somehow the hearing
18 schedule in this matter is a function of their
19 negotiations with Manitoba Hydro.

20 What if Manitoba Hydro sues Ontario
21 Hydro? What if Ontario Hydro sues Manitoba Hydro?
22 It's irrelevant to the question before you in the
23 Northwatch matter which is: Has Hydro proven its case?
24 And I suggest the answer is that they have proven a
25 sufficient case to continue.

1 But let's take it one step further. What
2 is the evidence on the Manitoba issue that Hydro wishes
3 to put forward, does it affect the undertaking?
4 Northwatch's motion is directed at the undertaking. Is
5 there an undertaking before you? Do you have
6 jurisdiction to continue?

7 At best or at highest the evidence that
8 we wish to hear from Ontario Hydro goes to one method
9 for carrying out the undertaking. To paraphrase what
10 the undertaking is it would be -- I suggest a simple
11 way of putting it: What are the electricity needs of
12 this province over the next 25 years? That is the
13 undertaking.

14 The Manitoba Purchase is only one method
15 of carrying it out and there are many methods. Hydro
16 can have a do nothing strategy, they can have a
17 demand/management strategy. Manitoba is one subset of
18 that. But that's enough speculation.

19 I would like to take you through the
20 Ontario Hydro submissions just paragraph by paragraph.

21 Paragraph No. 1, I suggest states that
22 Ontario Hydro says that scheduling is in the discretion
23 of the Board and I agree with that.

24 Paragraph 2 is nothing more than evidence
25 by way of submission. They are putting evidence on the

1 record. There's no cite as to where it came from.
2 Then Ontario Hydro has received Manitoba Hydro's
3 response. Of course we don't have the response, we
4 just have the press release. But let's take it as it
5 is, it's evidence.

6 Now, what's No. 3.

7 Ontario Hydro submits that it should
8 not be required to call evidence relevant
9 to dealing with the Manitoba contract at
10 a time when it's in the midst of the
11 process of evaluating Manitoba's
12 response...

13 Et cetera, et cetera. Well, that first
14 is irrelevant to the Northwatch motion, has no effect
15 whatsoever. The Northwatch motion has to be dealt with
16 on the record before you.

17 Further, what is determinative is the
18 fact that this issue can't be determined between now
19 and January 5th. Hydro could be in the midst of
20 negotiations for years. So I say No. 3 is irrelevant.

21 In paragraph 4, it's in two parts. In
22 the first part Hydro talks about the difficulty of
23 Ontario Hydro proceeding to call evidence in the
24 current schedule and exacerbating factors. Once again
25 I say that's irrelevant. You have to take Northwatch's

1 motion as it is and you look backwards not forwards.

2 And then at the end of paragraph 4, the
3 last three sentences, Hydro says:

4 And to the matters which need to be
5 considered on the Northwatch motion
6 support a short pause to permit issues
7 to be dealt with on a more appropriate
8 timetable.

9 Once again, I say that's irrelevant. The
10 only issue before the Board is what's happened prior to
11 today, not what's going to happen in the future.

12 Paragraph 5, Ontario Hydro submits that
13 these timing considerations affect both the scheduling
14 of the upcoming Ontario Hydro witnesses and the
15 scheduling of the argument of Northwatch. I think that
16 affects all parties and not peculiarly Ontario Hydro
17 and, once again, it's immaterial.

18 Then paragraph 6, and I think this is an
19 important paragraph because, in fact, this very
20 paragraph leads to the conclusion that Hydro's motion
21 should be dismissed and Northwatch's motion.

22 The Northwatch motion is based on broad
23 considerations which Northwatch alleges should lead to
24 early dismissal.

25 The motion on its face does not

1 provide any specific focus on the matter
2 of the approval requested for Manitoba
3 transmission.

4 I say, therefore, proceed with the
5 Northwatch motion, look at evidence and come to a
6 conclusion as to whether or not there's a reasonable
7 chance for Ontario Hydro to succeed in this case. If
8 you find there is, then you dismiss the Northwatch
9 motion.

10 Again, paragraph 7, I simply characterize
11 as this: If Ontario Hydro is correct this point is
12 fatal to the Northwatch motion but it does nothing
13 whatsoever to support an adjournment.

14 And then we get to paragraph 8, and in
15 paragraph 8 I have given you my submission which is
16 this: The paragraph 8(b) question is an included issue
17 in the Northwatch motion. And if we can just digress
18 for a minute and look at the Northwatch motion and see
19 what is being requested.

20 Mr. Greenspoon says the grounds for the
21 motion are as a result of the changes in planning and
22 program recommended by the board of directors and the
23 new directions confirmed by the Board in October of
24 '92. There is not now an undertaking in respect of
25 which an environmental assessment has been submitted.

1 So you have to ask yourself: Is there an
2 undertaking? It's the same questions you asked in the
3 MEA motion last October -- or last spring and you came
4 to the conclusion (a) in that matter, that there was an
5 undertaking and (b), in any event, the applicant can
6 change the undertaking.

7 I say that in and of itself is conclusive
8 on the Northwatch motion, but let's look at the
9 question Hydro asked.

10 Is the evidence on the Manitoba
11 transmission approval such that the hearing panel
12 should deny the approval prior to hearing the balance
13 of the intervenor evidence? That is a non-suit
14 question, that's exactly what non-suits are all about.

15 And what Hydro is attempting to do is
16 seek an adjournment for a collateral purpose that is
17 unknown to me to ask, instead of asking the big
18 question they are just asking a smaller question, and I
19 suggest I could ask 50 questions, give me a couple of
20 days and I'll come up with 50 questions like this.
21 Because what they are really asking you to do, as you
22 point out, Mr. Chairman, is to give reasons, and
23 there's a question of whether or not in fact you're
24 compelled by law to give reasons, but that is something
25 in the Board's discretion what the reasons are and how

1 they're to be written.

2 So if you look at the Northwatch
3 application you'll see, in my submission, that 8(b) is
4 necessarily included in the Northwatch matter.

5 Now, at the bottom of paragraph 8 Mr.
6 Campbell states that that motion clearly encompasses
7 the disposition of the specific approval requested in
8 relation to the Manitoba transmission, an issue which
9 should not be lost in the broad characterization of the
10 Northwatch motion for early dismissal.

11 I couldn't agree with him more, but that
12 certainly isn't a rationale for adjourning the
13 Northwatch motion and it certainly is not a rationale
14 to have a separate motion. The entire application by
15 Hydro rests on, this matter should not be lost in the
16 broad characterization of the Northwatch motion.

17 Clearly it hasn't, it's been brought to your attention.

18 Finally paragraph 9, in a sense is the
19 nub of the issue, and I say is irrelevant because you
20 cannot operate this hearing as a function of Ontario
21 Hydro's negotiations with Manitoba or with any other
22 problem.

23 You could take Ontario Hydro's submission
24 and you could delete Manitoba Hydro and fill in the
25 blanks; you could put Mattagami in there, you could put

1 demand/management, you could put any issue that you
2 wish that's part of the hearing.

3 So on the basis of those submissions the
4 CAC takes the position that the Board should get on
5 with this, that the Northwatch motion should be heard,
6 that Ontario Hydro is saying itself there is nothing
7 further it requires to deal with the Northwatch motion
8 and the Board should be very reluctant to exercise its
9 discretion and allow what would I would call a
10 prospecting exercise in the future to find evidence
11 that might help Ontario Hydro counter the Northwatch
12 motion. Because if you accept that, Mr. Chairman, I
13 realize this is an administrative tribunal --

14 THE CHAIRMAN: How do you say it's a
15 prospecting issue? As far as the Northwatch motion is
16 concerned, Hydro's position seems to be that this is -
17 and they want to emphasize - this is an essential
18 ingredient in any decision to allow the Northwatch
19 motion but - I guess I'm repeating myself - but they
20 want that particular ingredient specifically dealt
21 with.

22 MR. ROSENBERG: I characterize Ontario
23 Hydro's motion as a very clever way --

24 THE CHAIRMAN: But where is it
25 prospecting? That is what I couldn't quite figure.

1 MR. ROSENBERG: Well, it's prospecting
2 because they want certain evidence that isn't on the
3 record to be before you in the non-suit application.

4 And if I can characterize it this way:

5 In any application for a non-suit that I have responded
6 to or that I'm aware of people responding to, you
7 always say (a) the record is sufficient and, if it
8 isn't, wait til you hear something else and that will
9 convince you. How can any evidence in the future be
10 relevant to the Northwatch motion? It can't be.

11 So Hydro has instead said, we accept that
12 but let's ask a preliminary question.

13 THE CHAIRMAN: I'm used to sort of
14 unusual procedure, but you who are opposed to the
15 Northwatch motion are fighting against an opportunity
16 for the person who's also opposed to the Northwatch
17 motion bringing forward evidence, which is a strange
18 position to be taking.

19 MR. ROSENBERG: We would like --

20 THE CHAIRMAN: I can only infer from that
21 that you think the evidence will be helpful to the
22 Northwatch motion.

23 MR. ROSENBERG: No, contrary. I think
24 it's irrelevant to the Northwatch motion.

25 THE CHAIRMAN: Well, so...

1 MR. ROSENBERG: It's irrelevant.

2 THE CHAIRMAN: You are just basing it on
3 a waste of time, is that what you mean?

4 MR. ROSENBERG: I think it's a waste of
5 time and we should get on with the hearing.

6 I still don't understand what the future
7 evidence is going to do to bolster or take away from
8 the Hydro case because it's not the issue.

9 The issue in the Northwatch motion is:
10 Is there an undertaking before you? And Mr. Greenspoon
11 says there's no undertaking. And I suggest that the
12 evidence is that there is an undertaking, but let's
13 look at the Hydro evidence at its best.

14 They are going to bring forward evidence
15 to talk about one of the methods that they plan to
16 utilize to carry out the undertaking, and how can that
17 be helpful, it's irrelevant to the issue before you.
18 It has nothing to do with it.

19 On one final point, Mr. Campbell was
20 asking what position the intervenors are going to take
21 with respect to the Manitoba purchase. The CAC's
22 position is we don't know because we haven't heard all
23 of the evidence.

24 Dr. Connell mentioned or raised the
25 question with some of the intervenors and with Hydro

1 itself. We haven't heard all of the evidence so we
2 don't know what position we are going to take.

3 I don't know how that affects Mr.
4 Campbell's argument, but the reason there is no
5 position from the CAC is because we haven't heard all
6 the evidence.

7 So I urge upon you the following, and
8 that is, that you dismiss Hydro's motion, that we go on
9 to the Northwatch motion and that we get on with this
10 hearing. If you choose to dismiss the application
11 there's nothing that Hydro can put before you in this
12 evidence that can affect the Northwatch motion one way
13 or the other.

14 THE CHAIRMAN: Thank you, Mr. Rosenberg.

15 Mr. Hamer.

16 MR. HAMER: Mr. Chairman, I haven't
17 brought my book today. I'm sorry to see that Mr.
18 Rogers isn't here today because I always enjoy his
19 submissions, but I'm happy to tell you that for once I
20 have an opportunity to say that I'm a member of the
21 confused party.

22 On the one hand you have all heard Mr.
23 Heintzman and me last week on the matter of
24 adjournments and the need for the hearing to proceed
25 expeditiously and to avoid excursions which are

1 unlikely to be profitable.

2 On the other hand you heard my colleague
3 Mr. Heintzman many months ago raising hard questions
4 about the cost effectiveness of the Manitoba Purchase
5 and, if I get my notes right here, in the final
6 analysis my client is neither going to oppose nor to
7 consent to the adjournment which Hydro has requested.

8 If the adjournment were to be granted I
9 would adopt Mr. Mark's submissions on the matter of
10 filing deadlines. I suspect, with all due respect to
11 Mr. Poch, that you would find that if the filing
12 deadlines were extended and we ended up calling
13 evidence on the various matters, that somehow Mr. Poch
14 would manage to update his evidence to reflect whatever
15 comes forth from Hydro in the immediate future.

16 And there may be some cost implications
17 if there were to be an adjournment granted today. I
18 don't have any submissions on that today. I simply
19 want to reserve my client's rights in the event that
20 there should be an impact on the costs of this
21 enterprise overall.

22 Having just heard about the adjournment
23 proposal, I haven't really tried to think it through,
24 whether it makes it cheaper or more expensive, but I
25 reserve my position with respect to that.

1 I'm obliged.

2 THE CHAIRMAN: Have we heard from
3 everybody who wants to make a submission against the
4 proposal? (No response.)

5 Do you have any reply submissions?

6 MR. B. CAMPBELL: Briefly, Mr. Chairman.

7 THE CHAIRMAN: Perhaps we should -- all
8 right, go ahead.

9 MR. B. CAMPBELL: Mr. Chairman, there are
10 a few matters that Mr. Greenspoon addressed that I will
11 address.

12 With respect to proceeding and asking for
13 an adjournment on the grounds that I did this morning,
14 in the course of my discussions with Mr. Greenspoon
15 yesterday I want to tell you that my recollection is
16 that Mr. Greenspoon explicitly advised me that it was
17 my clear right to ask for an adjournment.

18 [2:50 p.m.]

19 Secondly, I see no basis for Mr.
20 Greenspoon to take the position that the matters that
21 are raised in the two Board memoranda of September or
22 October are not relevant to his motion. You will
23 recall in my submissions I suggested that his motion in
24 part grew from that, a proposition which he vigorously
25 denied.

1 Now, I do not understand how that
2 position can possibly be taken given that the first
3 ground for the motion in the Notice of Motion starts
4 with the words:

5 As a result of the changes in planning
6 and program recommended to the board of
7 directors of Ontario Hydro in July and
8 September 1992 and the new directions
9 confirmed by the board on October 1992...
10 et cetera.

11 It is absolutely clear, in my submission,
12 that the matters which precipitated all of this are the
13 matters discussed in that material, that is why Mr.
14 Poch was so keen to have it properly before you so it
15 could form a proper evidentiary foundation in
16 connection with all of this.

17 It is clear that the motion derives from
18 that on the face of the material filed by Northwatch
19 and, in my submission, there is no other reasonable
20 conclusion on that basis.

21 I reject utterly Mr. Greenspoon's
22 contention that Hydro has throughout this hearing been
23 saying give us more time, give us more time. There is
24 proof positive for many years that we have done our
25 utmost to do what we can to keep this matter moving on

1 a timely basis. Something over 10,000 interrogatories
2 answered with, in practical terms, no motions in front
3 of the Board is, in my submission, a pretty startling
4 body of proof of that point.

5 I think the only other matters I want to
6 address were spoken to by Mr. Rosenberg, and what I
7 would say to you, Mr. Chairman, with respect to Mr.
8 Rosenberg's submissions is that apparently he was out
9 of the room when I made my submissions dealing with all
10 of those points.

11 In my submission, he has completely
12 mischaracterized the position that Hydro has argued
13 before you. I am not going to go through all of the
14 paragraphs again and make all my arguments again. I am
15 beginning to learn that saying it twice is not as
16 important as saying it once well, and I think I will
17 take my own advice from time to time on that matter and
18 this will be one of those occasions.

19 The points that Mr. Rosenberg raises, to
20 the extent that they are real points and many of them I
21 submit to you are not, I believe I have spoken to in my
22 original submissions and I rely on those.

23 The one item I would like to say with
24 respect to Mr. Rosenberg's position is simply that he
25 seems to characterize us as trying in some way to shore

1 up or otherwise reinforce the case is the evil he seems
2 to be worried about.

3 The analysis that I say is essential to
4 being able to bring a position in front of you is not
5 yet complete. I can't tell you whether it's going to
6 be wonderful for me or whether it's not going to go
7 wonderful for me in terms of the case.

8 The basic premise on which he is
9 operating from, I think the whole purpose of bringing
10 this before you is because I don't know in the end
11 exactly what that position is. I will very shortly in
12 terms of the timetable of this hearing, I will shortly,
13 but to suggest that it is somehow intended shore up our
14 case is a rather ridiculous proposition given that the
15 analysis is not done and nobody, nobody knows what it's
16 going to come out with.

17 Appearing before other panels of this
18 Board where my observation has been -- well, anyway...

19 I think my submission is that we want a
20 practical solution to a very real problem. We can
21 characterize this thing six ways to Friday. It's a
22 lawyer's dream to be able to do so. I think you have
23 seen a variety of examples of that.

24 Quite frankly, I don't care how it's
25 characterized. I think there is a logical order to

1 addressing the matters before the Board at this point.
2 That's what we are aiming at, you can call it whatever
3 you want. Ontario Hydro doesn't care. Ontario Hydro
4 says there are real issues of importance to the public,
5 which should be addressed by this Board in a logical
6 and orderly way and that's what we are asking for in
7 bringing this before you.

8 Thank you.

9 THE CHAIRMAN: Anyone else want to make a
10 reply submission?

11 It's now five to three. We will adjourn
12 at least until 3:15 to consider this matter. I can't
13 predict, I never can, how long it will take to resolve
14 it, but we will keep in touch and let you know. But
15 you have at least until 3:15.

16 ---Recess at 2:55 p.m.

17 ---On resuming at 3:30 p.m.

18 THE CHAIRMAN: Please be seated.

19 We have before us a request by Ontario
20 Hydro to adjourn the hearing of the Northwatch motion
21 and the evidence of its witnesses prior to Panel 2,
22 which is presently scheduled to commence next Monday,
23 November 30th.

24 Ontario Hydro also asks that we consider
25 in relation to or contemporaneously with the Northwatch

1 motion the extent of the evidence on the Manitoba
2 transmission, and specifically asks that we address the
3 question, "Is the evidence on the Manitoba transmission
4 approval such that the hearing panel should deny the
5 approval prior to hearing the balance of the
6 intervenors' evidence."

7 We have given this matter consideration
8 and we have reached conclusions which are as follows:
9 First, with respect to the Ontario Hydro evidence we
10 are prepared to adjourn the presentation of that
11 evidence to January 5th, 1993 on the understanding that
12 Ontario Hydro will not ask for a further adjournment.

13 Apart from the reasons advanced by the
14 proponent for that delay, we think that the delay will
15 be beneficial to our understanding of the evidence for
16 two reasons: One, because the 1992 load forecast will
17 be then available subject to approval of the Board of
18 Directors of the proponent scheduled for December 15th,
19 and two, the requested supplementary information on
20 Exhibits 788 and 789, which are the Hydro memoranda of
21 this fall will be available.

22 In addition to the Panel 10 evidence on
23 January 5th, we would expect and require that there be
24 a person who would be able to answer questions about
25 the 1992 load forecast, and we would ask that the

1 supplementary evidence with respect to the memoranda be
2 made available as soon as possible with a view to
3 having all such information available by December 15th
4 next.

5 Second, while we understand the contrary
6 reasons, we are of the view that it would be preferable
7 that the Ontario Hydro evidence be heard in advance of
8 the Northwatch motion. We do not consider on balance
9 that it would be prejudicial to the mover of that
10 motion and those that support it, and we consider that
11 there is a possibility that the evidence will be of
12 considerable assistance in helping us reach a
13 conclusion.

14 The timing is somewhat uncertain. We
15 still would expect that the Hydro evidence and
16 cross-examinations could be completed on the 5th and
17 6th. We will not be sitting on the 7th due to
18 commitments of the panel outside this hearing. If we
19 do not complete on the 6th, then we would continue on
20 the 11th and following.

21 If we do complete the Hydro evidence and
22 cross-examination on the 5th and 6th, then the
23 Northwatch motion will be heard on the 11th.

24 We accept the proposition that there
25 should be some delay between the time of the completion

1 of the Hydro evidence and cross-examination and the
2 commencement of the Northwatch motion. How long that
3 should be I think would be better set at the time
4 rather than now.

5 Third, we do not consider it appropriate
6 that the questions set out in paragraph 8B be
7 specifically dealt with on the Northwatch motion. We
8 are not persuaded at this point it should be formally
9 dealt with at all, but we would leave that question
10 open. Following the disposition of the Northwatch
11 motion it would be open to the proponent if so advised
12 to bring that motion forward again or a similar motion
13 or as the circumstances may then warrant.

14 This does not mean that the Manitoba
15 transmission issue and the relation of the Manitoba
16 contract to that issue will not be a pertinent matter
17 to be discussed on the Northwatch motion. All parties
18 should recognize that, both those who oppose it and
19 those, if any, who support the Manitoba transmission
20 application.

21 We accept the submission that the filing
22 dates should be correspondingly extended. I don't know
23 what that means specifically, but we will get a notice
24 out to you in short order about that.

25 We are not, I repeat, not adjourning this

1 hearing until January 5th. This hearing is being
2 adjourned sine die on reasonable notice. People should
3 be available on a daily basis to reconvene if that
4 should seem appropriate. This is because of the
5 apparently very volatile situation that we are in and
6 the ability to predict the future is very difficult. I
7 am not saying that there will be anything but there
8 might be and I do not want us to be in a position of
9 not being able to go forward if we have to with some
10 intervening matter that may occur.

11 We will not plan to sit and we will
12 probably refuse to sit any time after December 17th and
13 before January 5th.

14 I think that's all that we have to say
15 about this matter at this time. So we are adjourned
16 sine die.

17 ---Whereupon the hearing was adjourned at 3:37 p.m.
18 to be reconvened sine die.

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25 JAS/BD [c. copyright 1985]



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